Supreme Court, U.S.
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No. ___

IN THE

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,
Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Illinois courts may, consistent with the Due Process Clause, assert personal jurisdiction over out-of-state corporations that have no offices, agents, or employees in Illinois, to adjudicate claims arising from an industrial accident that occurred at a plant located outside of Illinois, solely on the ground that much of the product of that plant is sold, outside of Illinois, to an Illinois firm, when that contact between the defendants and Illinois is unrelated to the plaintiffs' claims.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioners are Southern Company; Southern Energy, Inc.; SEI State Line, Inc.; State Line Holding Corporation; and State Line Energy, L.L.C. The respondents are Richard T. Alderson, Robert A. Kallok, Cyril Smotrilla, David Arcuri, and Paul Danielson. Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., were also parties in the court below.

Southern Company is a publicly held corporation that does not have any parent corporations. No publicly held company owns 10% or more of Southern Company's stock.

Southern Energy, Inc. is now known as Mirant Corporation. Mirant Corporation is a publicly held corporation that does not have any parent corporations. No publicly held company owns 10% or more of its stock.

SEI State Line, Inc. is now known as Mirant State Line Ventures, Inc. Mirant State Line Ventures, Inc. is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation. As noted above, Mirant Corporation is publicly held.

State Line Holding Corporation is wholly owned by Mirant State Line Ventures, Inc. As noted above, Mirant State Line Ventures, Inc. is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation, which is publicly held.

Petitioner State Line Energy, L.L.C. is 40% owned by State Line Holding Corporation and 60% owned by Mirant State Line Ventures, Inc. As described above, State Line Holding Corporation is wholly owned by Mirant State Line Ventures,

Inc., which in turn is wholly owned by Mirant Americas Generation L.L.C., which in turn is wholly owned by Mirant Americas, Inc., which in turn is wholly owned by Mirant Corporation, which is publicly held.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE PETITION	10
A. The Decision Below Is In Error	10
B. State and Lower Federal Courts Are Deeply Divided About the Permissible Extent of General Jurisdiction	15
CONCLUSION	25
Appendix A	1a
Appendix B	36a
Appendix C	37a
Appendix D	47a

TABLE OF AUTHORITIES

CASES Page

Anthem Ins. Cos. v. Tenet Healthcare Corp., 730 N.E. 2d 1227 (Ind. 2000) 20, 23

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987)..... 3

Atlanta Auto Auction, Inc. v. G&G Auto Sales, Inc., 512 So. 2d 1334 (Ala. 1987)..... 21

Bearry v. Beech Aircraft Corp., 818 F. 2d 370 (5th Cir. 1987)..... 19,23

Buddensick v. Stateline Hotel, Inc., 972 P. 2d 928 (Utah Ct. App. 1998), cert. denied, 982 P. 2d 88 (Utah 1999), cert. denied, 528 U.S. 928 (1999)..... 21-22, 23

Burger King v. Rudzewicz, 471 U.S. 462 (1985)... 3, 23

Burnham v. Superior Court, 495 U.S. 604 (1990)..... 24

Calder v. Jones, 465 U.S. 783 (1984)..... 2, 3

Colletti v. Crudele, 169 Ill. App. 3d 1068, 523 N.E. 2d 1222 (1988)..... 17

Congoleum Corp. v. DLW Aktiengesellschaft, 729 F. 2d 1240 (9th Cir. 1984) 18

Connelly v. Uniroyal, Inc., 75 Ill. 2d 393, 389 N.E. 2d 155 (1979), cert, denied, 444 U.S. 1060 (1980)..... 17

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)..... 2

Cubbage v. Merchent, 744 F. 2d 665 (9th Cir. 1984), cert. denied, 470 U.S. 1005 (1985)..... 22

Daimler-Benz Aktiengesellschaft v. Olson, 21 S.W. 3d 707 (Tex. Ct. App. 2000), pet. for cert. filed, No. 01-929 (docketed Jan. 3, 2002)..... 5

De Reyes v. Marine Management and Consulting, Ltd., 586 So. 2d 103 (La. 1991)..... 20, 23

TABLE OF AUTHORITIES—Continued

	Page
Ferens v. John Deere Co., 494 U.S. 516 (1990)....	25
Follette v. Clairol, Inc., 829 F. Supp. 840 (W.D. La. 1993).....	24
Glater v. Eli Lilly & Co., 744 F. 2d 213 (1st Cir. 1984).....	18
Glover v. Western Air Lines, Inc., 745 P. 2d 1365 (Alaska 1987).....	14
Gulentz v. Fosdick, 466 A. 2d 1049, 320 Pa. Super. 38 (1983).....	14
Hanson v. Denckla, 357 U.S. 235 (1958).....	3, 15, 23
Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984).....	*passim*
Holt Oil & Gas Corp. v. Harvey, 801 F. 2d 773 (5th Cir. 1986), cert. denied, 481 U.S. 1015 (1987).....	5, 11
Hughes v. A.H. Robins Co., 490 A. 2d 1140 (D.C. 1985).....	18
IDS Life Insurance Co. v. SunAmerica Life Insurance Co., 136 F. 3d 537 (7th Cir. 1998)....	14
Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982).....	3
International Shoe Co. v. Washington, 326 U.S. 310 (1945).....	3, 11, 12
Japax, Inc. v. Sodick Co., 186 Ill. App. 3d 656, 542 N.E. 2d 792 (1989).....	17
Keeton v Hustler Magazine, Inc., 465 U.S. 770 (1984).....	3
Kulko v. Superior Court, 436 U.S. 84 (1978).....	3
McGee v. International Life Ins. Co., 355 U.S. 220 (1957).....	3
Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F. 3d 560 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996).....	5, 11, 19-20, 23

TABLE OF AUTHORITIES—Continued

Page

Michigan National Bank v. Quality Dinette, Inc., 888 F. 2d 462 (6th Cir. 1989) 16, 21
Newco Manufacturing Co., ex parte 481 So. 2d 867 (Ala. 1985) 20-21
Nichols v. G.D. Searle & Co., 991 F. 2d 1195 (4th Cir. 1993) 18, 23-24
Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) ..... *passim*
Phillips Petroleum v. Shutts, 472 U.S. 797 (1985) 25
Provident National Bank v. California Federal Savings & Loan Ass'n, 819 F. 2d 434 (3d Cir. 1987) 16, 21
Ratliff v. Cooper Laboratories, Inc., 444 F. 2d 745 (4th Cir.), cert. denied, 404 U.S. 948 (1971) 18
Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923) 12-13
Rush v. Savchuk, 444 U.S. 320 (1980) 3, 7
Schreiber v. Allis-Chalmers Corp., 611 F. 2d 790 (10th Cir. 1979) 15
Shaffer v. Heitner, 433 U.S 186 (1977) 3
Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950) 3
United Brotherhood of Carpenters and Joiners, ex parte 688 So. 2d 246 (Ala.), cert. denied, 521 U.S. 1118 (1997) 21
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 3, 15

CONSTITUTIONAL PROVISION, STATUTES, AND RULES

United States Constitution:

Fourteenth Amendment ..... *passim*

TABLE OF AUTHORITIES—Continued

	Page
28 U.S.C. 1257(a)	2
28 U.S.C. 1404(a)	25
735 ILCS 5/2-209(a) (West 1998)	6
735 ILCS 5/2-209(b)(4) (West 1998)	7
S. Ct. R. 14.1(g)(i)	7, 9
166 Ill.2d R. 306(a)(3)	7

MISCELLANEOUS

Brilmayer, Lea, et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721 (1988)	16
George, B. Glenn, *In Search of General Jurisdiction*, 64 Tul. L. Rev. 1097 (1990)	15-16
Juenger, Friedrich K., *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141	15
von Mehren, Arthur T. & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121 (1966)	4, 24

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PETITION FOR A WRIT OF CERTIORARI

Southern Company, Southern Energy, Inc., SEI State Line, Inc., State Line Holding Corporation, and State Line Energy, L.L.C., respectfully petition for a writ of certiorari to review the judgment of the Appellate Court of Illinois, First District, in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois (Pet. App. 1a-35a) is reported at 321 Ill. App. 3d 832, 747 N.E.2d 926, 254 Ill. Dec. 514. The opinion of the Circuit Court of Cook County (Pet. App. 37a-46a) is unreported.

JURISDICTION

The judgment of the Appellate Court of Illinois was entered on March 22, 2001. Pet. App. 1a. A timely petition

for discretionary review was denied by the Illinois Supreme Court on October 3, 2001. Pet. App. 36a. On December 20, 2001, Justice Stevens extended the time in which to file a petition for a writ of certiorari to February 18, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

The decision of the Appellate Court rejected petitioners' argument that the Due Process Clause of the Fourteenth Amendment precluded the state courts from exercising personal jurisdiction over them. See Pet. App. 31a-34a. Although that decision contemplates further proceedings in the state courts, the Appellate Court's judgment "'is plainly final on the federal issue and is not subject to further review in the state courts.'" *Calder v. Jones*, 465 U.S. 783, 788 n. 8 (1984), quoting *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 485 (1975). This Court has repeatedly held, in "cases presenting jurisdictional issues in this posture" (*Calder*, 465 U.S. at 788 n.8), that the judgment is final within the meaning of 28 U.S.C. 1257(a). See *Calder*, 465 U.S. at 788 n.8 (citing cases).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT

A. Introduction

This case presents, with exceptional clarity, what is perhaps the single most important unresolved issue in the law of civil procedure. The Illinois courts in this case asserted general personal jurisdiction over petitioners—that is, jurisdiction to adjudicate claims unrelated to petitioners' contacts with Illinois. A state with general jurisdiction over a defendant may adjudicate any cause of action whatever against that defendant, brought by any plaintiff, no matter where in the world that cause of action arose.

Beginning with the decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which reconceptualized the constitutional limits on personal jurisdiction, this Court has addressed the question of *specific* jurisdiction—when a state may assert jurisdiction on the basis of contacts by the defendant that are *related* to the claim against it—more than a dozen times.[1] These decisions have refined and clarified the law governing specific jurisdiction, and they have also greatly expanded the permissible scope of specific jurisdiction: today, it is settled that a state may assert jurisdiction to adjudicate a claim based on only the most limited contacts between the state and the defendant, as long as those contacts are related to the claim. See, *e.g.*, *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-24 (1957); *Keeton v Hustler Magazine, Inc.*, 465 U.S. 770 (1984).

But since *International Shoe*, this Court has decided only two cases dealing with general jurisdiction over corporations, and one of those cases is fifty years old. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). As a result, state and lower federal courts in general jurisdiction cases—lacking guidance from this Court, and confronted with the great expansion in the permissible scope of specific jurisdiction—have moved in sharply divergent directions. Traditionally states have exercised

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[1] In addition to *International Shoe*, itself a specific jurisdiction case, 326 U.S. at 320, see *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Calder v. Jones*, 465 U.S. 783 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982); *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Shaffer v. Heitner*, 433 U.S 186, 213-217 (1977); *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950).

general jurisdiction over firms that are incorporated in the state or that have their principal place of business there.[2] Some courts have determined not to extend general jurisdiction much beyond these traditional bases, reasoning that, in view of the great expansion in specific jurisdiction, there is no need for expansive general jurisdiction.

Other courts—like the court below, whose decision reflects established principles of Illinois law—have done the opposite: they have greatly expanded the boundaries of general jurisdiction, self-consciously paralleling the expansion of specific jurisdiction. Decisions like those of the Illinois courts vastly exceed both the traditional boundaries of the notion of general jurisdiction and, we submit, any reasonable conception of general jurisdiction.

The decision in this case presents this question—the permissible extent of a state's general jurisdiction over corporations—as clearly as that issue is ever likely to be presented. The claim in this case concerns not a multistate transaction with a difficult-to-specify geographical situs, but injuries incurred in an industrial accident that took place at a power generating plant located in Indiana. Many general jurisdiction cases come to this Court with some tincture of specific jurisdiction—some arguable connection between the defendant's contacts with the forum and the plaintiff's claim.[3] But in this case, both courts below explicitly acknowledged that respondents' claim is unrelated to petitioners' alleged contacts with Illinois.

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[2] See, *e.g.*, Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-44 (1966).

[3] For example, in *Helicopteros Nacionales de Colombia v. Hall*, *supra*, the only general jurisdiction case the Court has decided in the last 50 years, Justice Brennan dissented primarily on the ground that the defendant's activities in the forum state were related to the claim. See 466 U.S. at 424-28.

Finally, courts that assert general jurisdiction typically do so by concatenating a large number of contacts and concluding that in combination they are sufficient to establish general jurisdiction.[4] Multi-factor cases of that kind are seldom well suited for this Court's review, because they are unlikely to provide clear guidance for future cases in which a different combination of factors is present. In this case, however, the court below ruled that the Due Process Clause was satisfied for one reason alone: because the bulk of the output of the plant where the accident occurred was sold—in Indiana—to an Illinois firm. The question of the permissible scope of general jurisdiction—a recurring and important question on which this Court's guidance is unquestionably needed—is, therefore, presented in this case starkly and without factual complexity.

B. The Proceedings Below

1. Petitioners are a group of affiliated firms. Petitioner Southern Company, a publicly-owned holding company, is the parent of petitioner Southern Energy, Inc. Southern Company and Southern Energy, Inc., are among the largest producers of electricity in the United States. Petitioners SEI State Line, Inc., and State Line Holding Corp. are owned, through a subsidiary, by Southern Energy, Inc. They in turn own petitioner State Line Energy, L.L.C., an Indiana limited liability company. State Line Energy owns and operates a power plant in Hammond, Indiana. None of the petitioners is incorporated in Illinois; none has a place of business there.[5]

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[4] See, *e.g.*, *Daimler-Benz Aktiengesellschaft v. Olson*, 21 S.W. 3d 707 (Tex. Ct. App. 2000), pet. for cert. filed, No. 01-929 (docketed Jan. 3, 2002); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F. 3d 560, 570-71, 572-73 (2d Cir.), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996); *Holt Oil & Gas Corp. v. Harvey*, 801 F. 2d 773, 779 (5th Cir. 1986), cert. denied, 481 U.S. 1015 (1987).

[5] Southern Company, like Southern Energy, Inc., is a Delaware corporation that has its principal place of business in Georgia. Pet. App. 3a.

In July, 1998, a coal dust explosion occurred at the Hammond power plant. Respondents, who are employees of Indiana contractors who were working at the power plant at the time, sued petitioners and other affiliated firms for injuries arising out of that accident. Pet. App. 2a. Respondents claimed that their injuries were caused by the negligent maintenance of the plant. Pet. App. 2a, 38a. Respondents brought their suit in the Circuit Court of Cook County, Illinois. Pet. App. 37a. Only one of the five respondents is a resident of Illinois. Pet. App. 2a.

2. The defendants filed special appearances and moved to dismiss the complaint on the ground that the Circuit Court of Cook County lacked personal jurisdiction over them. Pet. App. 2a. The circuit court granted the motion as to certain of the defendants but denied the motion as to petitioners.[6] The circuit court first rejected respondents' argument that personal jurisdiction could be based on an Illinois specific jurisdiction statute, 735 ILCS 5/2-209(a) (West 1998). Section 2-209(a) permits Illinois courts to assert personal jurisdiction on the basis of certain specified acts done by a defendant—such as the "making or performance of any contract or promise substantially connected with this State" (735 ILCS 5/2-209 (a)(7))—but only "as to any cause of action arising from the doing of any such acts" (735 ILCS 5/2-209(a), (f)). In invoking this provision, respondents relied

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SEI State Line, Inc., like State Line Holding Corp., is an Indiana corporation that has its principal place of business in Indiana. State Line Energy, L.L.C., also has its principal place of business in Indiana.

Southern Energy, Inc., and its subsidiaries have been spun off from their former parent, Southern Company, since this litigation began. See Parties to the Proceeding and Rule 29.6 Statement, *supra*. This corporate reorganization does not affect the issues presented here.

[6] The circuit court also denied the motion as to defendants Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc. (Pet. App. 40a-41a, 46a), but the appellate court reversed (Pet. App. 26a-27a, 30a-31a, 34a-35a), and those firms are not petitioners here.

on, among other things, the fact that petitioners' purchase of the Hammond power plant involved contact with an Illinois firm and travel to Illinois. But the circuit court ruled that respondents "have failed to establish how the cause of action in this case, i.e. negligent maintenance, arose out of" any of petitioners' alleged contacts with Illinois. Pet. App. 39a-40a.

The circuit court instead held that respondents could obtain personal jurisdiction over petitioners under the Illinois general jurisdiction statute, 735 ILCS 5/2-209(b)(4) (West 1998). That statute allows a court to exercise personal jurisdiction "in any action arising within or without this State against any person who * * * is a natural person or a corporation doing business within this State." The court relied on the fact that State Line Energy was obligated by contract to sell all of the normal output of the Hammond generating plant to Commonwealth Edison, an Illinois firm. See Pet. App. 41a-42a.

The circuit court then explicitly ruled that this exercise of general jurisdiction over petitioners was consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Pet. App. 42a-43a. See S. Ct. R. 14.1(g)(i). The circuit court explained that petitioners "engaged in 'purposeful activity related to the forum that would make the exercise of jurisdiction fair, just or reasonable.'" Pet. App. 43a, quoting *Rush v. Savchuk*, 444 U.S. 320, 329 (1980).

3. The Illinois Appellate Court accepted petitioners' request for interlocutory review. See 166 Ill.2d R. 306(a)(3). The appellate court noted that "this appeal raises significant issues implicating appellants' constitutional rights." Pet. App. 15a. The appellate court then affirmed the circuit court's ruling that Illinois could assert personal jurisdiction over petitioners. Pet. App. 1a-35a.

The appellate court agreed with the circuit court that there was no basis for specific jurisdiction over petitioners. Pet. App. 18a-20a. The appellate court stated: "[P]laintiffs' causes of action do not arise from any of defendants' contracts or transactions in Illinois. * * * [P]laintiffs are asserting premises liability claims that arose in Indiana and do not arise from any of the Illinois contracts or transactions." Pet. App. 18a-19a. The appellate court also acknowledged that "State Line Energy * * * maintains no offices or sales activities in Illinois" (Pet. App. 21a). And the appellate court recognized that State Line Energy "has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois." Pet. App. 21a. The appellate court further acknowledged that, under the contract between State Line Energy and Commonwealth Edison, "Commonwealth Edison takes 'title' to the electricity in Indiana" (Pet. App. 21a) and State Line Energy "does not directly deliver its product into Illinois" (Pet. App. 23a).

The appellate court nonetheless concluded that State Line Energy was subject to general jurisdiction in Illinois—and "may be sued on causes of action both related and unrelated to its Illinois activities" (Pet. App. 21a)—because "State Line Energy committed to sell the Power Plant's electrical output to Commonwealth Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison." Pet. App. 21a. Consequently, the appellate court said, "there exists activity specifically directed toward the Illinois market." Pet. App. 23a. That, the appellate court concluded, was sufficient to establish general jurisdiction.

The appellate court then held that the other petitioners were also subject to general jurisdiction because of their relationship to State Line Energy. Pet. App. 29a-30a. Specifically, the appellate court ruled, "State Line Energy was a 'conduit' through which Southern and Southern Energy did business"

(Pet. App. 30a) and those petitioners "us[ed] State Line Energy as a means for generating revenue through the sale of electricity in a specified market." Pet. App. 30a.

Like the circuit court, the appellate court explicitly rejected petitioners' argument (see Pet. App. 47a-55a) that the assertion of general jurisdiction over petitioners violated the Due Process Clause of the Fourteenth Amendment. Pet. App. 31a-34a; S. Ct. R. 14.1(g)(i). In discussing the constitutional issue, the appellate court reaffirmed that it had no basis to assert specific jurisdiction over petitioners: "[P]laintiffs' premises liability actions do not arise directly out of defendants' contacts with Illinois." Pet. App. 33a. But the appellate court ruled that the Due Process Clause permitted an assertion of general jurisdiction over each of the petitioners:

> Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. Because these defendants have directed their activities toward the Illinois marketplace and have derived economic benefit as a result of those activities, the fact that the sale of electricity to Commonwealth Edison is technically carried out in Indiana is of no consequence.

Pet. App. 32a.

The court reiterated that petitioners, "through State Line Energy, agreed to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years. * * * [T]heir contacts with Illinois cannot be characterized as random, fortuitous, or attenuated." Pet. App. 33a. The appellate court concluded that all of the petitioners "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a.

The Illinois Supreme Court denied review. Pet. App. 36a.

REASONS FOR GRANTING THE PETITION

The decision of the court below is manifestly incorrect. It is not, however, an aberration. While some courts have hewed to the traditional bases of general jurisdiction over corporations—requiring very extensive contacts, of the kind a firm might have in its principal place of business—many state and lower federal courts have, like the Illinois courts, expanded general jurisdiction unjustifiably. Like the court below, many of those courts have explicitly invoked this Court's numerous specific jurisdiction decisions, simply assuming that the Court's expansion of specific jurisdiction justifies a commensurate expansion of general jurisdiction.

We believe that such an assumption is wrong and that general jurisdiction is properly confined to something closer to the traditional bases. But in any event, just as this Court superintended the development of the law governing specific jurisdiction, the trend toward expansive general jurisdiction—and the inconsistent results that trend has produced in the state and lower federal courts—should not be allowed to continue without this Court's review.

A. The Decision Below Is In Error.

1. The court below ruled that the fact that the bulk of the Hammond plant's output was sold to an Illinois firm was sufficient, under the Due Process Clause, to permit Illinois courts to assert general jurisdiction over petitioners.[7] This

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[7] We believe this is the only fair reading of the opinion of the appellate court. In justifying its conclusion that Illinois could assert general jurisdiction over petitioners, the appellate court relied repeatedly on the fact that the bulk of the plant's output was committed to an Illinois firm. See, *e.g.*, Pet. App. 21a, 23a, 25a, 26a, 32a, 33a, 34a.

While the appellate court did occasionally mention other facts in its discussion of the general jurisdiction and due process issues, the court gave no indication whatever that it would have reached a different conclusion in the absence of any of these facts. Notably, the opinion

Court has never held, or even suggested, that the Due Process Clause permits general jurisdiction to be asserted on a basis like that.

The benchmark for determining the constitutionality of an assertion of general personal jurisdiction is *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the only decision since *International Shoe* in which this Court has upheld the exercise of general jurisdiction over a corporation. A state may assert general personal jurisdiction only if the defendant's contacts with the state "constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416 (1984).

In *Perkins*, the defendant was incorporated in the Philippine Islands and had gold and silver mines there, but when the Japanese occupation of the Philippines during World War II "completely halted" the defendant's mining operations (342 U.S. at 447), the president of the corporation, who was also the general manager and principal stockholder, returned to his home in Ohio. There the president kept the firm's files, carried on correspondence, paid salaries, used Ohio bank accounts to conduct the firm's financial dealings, held directors' meetings, disbursed funds, and "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines" (*id.* at 448). In short, as this Court subsequently explained, "Ohio was the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n. 11 (1984). In these circumstances, the Court held that Ohio

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contains no qualifying language to the effect that the sales to Commonwealth Edison are not to be considered in isolation but must be aggregated with other contacts between petitioners and Illinois in order to establish general jurisdiction. Language of that kind is common in other general jurisdiction cases. See, *e.g.*, *Metropolitan Life Ins. Co.*, 84 F. 3d at 570-71; *Holt Oil & Gas Corp. v. Harvey*, 801 F. 2d at 779.

could assert jurisdiction over the defendant corporation to adjudicate a claim unrelated to the firm's activities in Ohio. See 342 U.S. at 448.

Petitioners, by contrast, conducted no business from Illinois and have no place of business of any kind in Illinois—no branch offices, no sales representatives, no bank accounts, no agents, no employees. Neither of the courts below suggested that Illinois was in any sense the principal place of business of any of the petitioners. No one can plausibly suggest that petitioners' contacts with Illinois resemble those present in *Perkins*.

2. The decision of the Illinois Appellate Court is also irreconcilable with *Helicopteros Nacionales de Colombia v. Hall, supra,* the only other case since *International Shoe* in which this Court has ruled on a claim of general jurisdiction over a corporation. In *Helicopteros*, the defendant, a Colombian corporation that provided helicopter transportation for oil and construction companies in South America, purchased 80% of its helicopter fleet from Bell Helicopter Company in Texas. The defendant also sent prospective pilots to Texas for training and sent management and maintenance personnel to visit Bell Helicopter in Texas for technical consultation. The defendant's chief executive flew to Texas to negotiate a contract related to the claim in the case. 466 U.S. at 411.

The Court in *Helicopteros*, citing *Perkins*, concluded that Texas courts could not assert general jurisdiction over the defendant. See 466 U.S. at 416. *Helicopteros* also relied extensively on *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), a pre-*International Shoe* case in which the Court held that New York could not assert personal jurisdiction over an Oklahoma firm, even though that firm purchased in New York a "large part of the merchandise to be sold at its [Oklahoma] store" (260 U.S. at 518).

The contacts between petitioners and Illinois are, if anything, less significant than the contacts found to be inadequate to sustain general jurisdiction in *Helicopteros* and *Rosenberg*. In both of those cases, officers of the defendant corporations systematically visited the forum state for business-related reasons; there are no comparable personal contacts between petitioners' officers and Illinois. In *Helicopteros* and *Rosenberg*, the defendants made substantial purchases within the boundaries of the forum state. Here, the sale of electricity took place outside of Illinois: Commonwealth Edison received the electricity from the Hammond plant through equipment it owned in Indiana and transmitted the electricity from Indiana to destinations of its own choosing, including destinations outside of Illinois. See Pet. App. 11a.

3. The appellate court's assertion of general jurisdiction over Southern Company and Southern Energy, Inc., is particularly egregious—although, as we explain below, it reflects an approach that a number of other courts have adopted.[8] Southern and Southern Energy are among the largest producers of electric power in the United States. In 1998, the year the accident occurred, Southern Company had operating revenues of approximately $11.4 billion.[9] The

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[8] The appellate court ruled that State Line Energy's contacts with Illinois should be attributed to Southern Company and Southern Energy on the ground that "State Line Energy was a 'conduit' through which Southern and Southern Energy did business." Pet. App. 30a; citation omitted. Although we believe that ruling was erroneous, we do not ask this Court to review it. Even accepting that Southern Company and Southern Energy should be treated as if they operated the Hammond plant, the notion that Illinois can assert general jurisdiction over those petitioners marks an extraordinarily expansive approach to general jurisdiction.

[9] This information is publicly available in Southern Company's annual report for 1998, which can be found at <http.//www.southerncompany.com/annualreports/ar98/financial.html>.

annual revenue from sales of electricity from the Hammond plant was approximately $25 million (Pet. App. 11a)—less than one-quarter of one percent of Southern Company's revenues.

On the basis of these sales from the Hammond plant, the appellate court held that Southern Company and Southern Energy "have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them." Pet. App. 33a. The court's explanation was that "their contacts with Illinois cannot be characterized as random, fortuitous, or attenuated." Pet. App. 33a.

As the Seventh Circuit stated in a similar context, "if these relations between [a defendant] and Illinois are sufficient to bring the company within the jurisdiction of the Illinois courts, then virtually every large company is within that jurisdiction." *IDS Life Insurance Co. v. SunAmerica Life Insurance Co.*, 136 F. 3d 537, 540 (7th Cir. 1998). Virtually every large firm will have contacts across the nation, with many states, that "cannot be characterized as random, fortuitous, or attenuated." The import of the appellate court's holding is that any such firm can be sued in any state in which it has such contacts—not just on claims related to those contacts, but on any claim whatever, no matter where it arose.

The court below is not alone in taking this approach. Other courts have acknowledged, even in cases involving firms that are not large, that their approach would make the defendant subject to suit in any state in the Union. See, *e.g.*, *Gulentz v. Fosdick*, 466 A. 2d 1049, 1056, 320 Pa. Super. 38, 52 (1983) (stating that its decision might permit the plaintiff to "select any state of the forty-eight continental United States as the forum state"); see also *Glover v. Western Air Lines, Inc.*, 745 P. 2d 1365, 1369 (Alaska 1987) (upholding general jurisdiction over Avis Rent-A-Car System even though it is not licensed to do business in the forum and has no

agents, employees, property, or bank account in the forum); *Schreiber v. Allis-Chalmers Corp.*, 611 F. 2d 790, 793-94 (10th Cir. 1979).

As this Court has said, on more than one occasion, "'it is a mistake to assume that th[e] trend'" toward more expansive specific jurisdiction "'heralds the eventual demise of all restrictions on the personal jurisdiction of state courts.'" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980), quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). The Court should not permit state and lower federal courts simply to drift, unguided, into continually expanding conceptions of the proper scope of general jurisdiction. If the jurisdictional regime in the United States is to change so dramatically—to allow, in practical terms, general jurisdiction in all 50 states for firms accounting for a large portion of the economy—that change, which directly and immediately implicates "the principles of interstate federalism embodied in the Constitution" (*World-Wide Volkswagen*, 444 U.S. at 293), should occur only because this Court has so decided.

B. State and Lower Federal Courts Are Deeply Divided About the Permissible Extent of General Jurisdiction.

Among state and lower federal courts there is sharp disagreement, along several dimensions, on the question of how to define the Due Process Clause limits on general personal jurisdiction. Commentators repeatedly note this inconsistency and attribute it to the lack of guidance from this Court.[10]

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[10] See, *e.g.*, Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141, 156 ("Fifty-six years after *International Shoe* was decided, we still do not know when states may assert dispute-blind [i.e. general] jurisdiction over nonresident corporations."); B. Glenn George, *In Search of General Jurisdiction*, 64 Tul. L. Rev. 1097, 1098 (1990) ("Courts * * * have been frustrated in attempts to apply general jurisdiction theory by the lack of guidance from the Supreme

This uncertainty among state and lower federal courts has several sources. Not only has this Court decided only two general jurisdiction cases, *Perkins* and *Helicopteros*, but both of those cases involved firms incorporated abroad. The Court has, therefore, never addressed general jurisdiction in a domestic interstate context—the context in which most cases arise. In addition, the only standard the Court has specified for determining the limits of general jurisdiction is the requirement that contacts between the defendant and the forum be "'continuous and systematic'" (*Helicopteros*, 466 U.S. at 415, quoting *Perkins*, 342 U.S. at 438). That phrase potentially covers an enormous range of cases. It might be limited—properly, in our view—to the functional equivalent of a principal place of business, as in *Perkins*. But that phrase might also be applied to a course of dealing such as "at least one sale * * * every month" in the forum, totaling only 3% of the defendant's total sales (*Michigan National Bank v. Quality Dinette, Inc.*, 888 F. 2d 462, 466 (6th Cir. 1989)), or even to the regular use of a bank account in the forum state (see *Provident National Bank v. California Federal Savings & Loan Ass'n*, 819 F. 2d 434 (3d Cir. 1987)).

Of direct relevance to this case, there is disagreement among state and lower federal courts about when sales activity connected to the forum state can justify general jurisdiction; about when a plant located outside of the forum

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Court."); *id.* at 1111 ("The Court's failure to deal more concretely with the general jurisdiction problem has led to confusion in lower court decisions. * * * Indeed, it is remarkable how far some courts have extended their jurisdiction over foreign corporations to litigate claims arising in another forum."); Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 724 (1988) ("[T]he only two Supreme Court cases addressing the issue of general jurisdiction since 1952 * * * provide some guidance, [but] the exact status and boundaries of general jurisdiction remain uncertain. Lower courts, unable to agree on the criteria establishing an adequate basis for general jurisdiction, often reach discordant results.").

but near its border can subject the operator of the plant to general jurisdiction; and, most fundamentally, about whether the great expansion in specific jurisdiction since *International Shoe* justifies a commensurate expansion of general jurisdiction or instead means just the opposite—that with the expansion of specific jurisdiction, an expansive view of general jurisdiction is unwarranted.

1. The decision below—which reflects settled Illinois law[11]—held that even when a defendant has no physical presence whatever in a state, sales to a firm incorporated in that state can establish general jurisdiction. This position is extreme but not isolated; other courts have taken a similar view. Some courts, however, while asserting general jurisdiction, have determined—in contrast to the court below—that an element of physical presence in the forum, such as a branch office, an agent, an employee, or another representative, is necessary to establish general jurisdiction. These courts would not have reached the same result in this case that the Illinois courts did.

Further, some courts directly contradict the decision below, and hold that general jurisdiction is unwarranted even when there are substantial sales in the forum state. Finally, a number of courts have ruled that even substantial sales accompanied by a physical presence by the defendant are insufficient to permit the assertion of general jurisdiction. These courts would confine general jurisdiction more closely

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[11] See, *e.g.*, *Japax, Inc. v. Sodick Co.*, 186 Ill. App. 3d 656, 663-64, 542 N.E. 2d 792, 796-97 (1989) (asserting general jurisdiction over a Japanese manufacturer whose products regularly entered Illinois, even though manufacturer sold only to intermediaries in Japan); *Colletti v. Crudele*, 169 Ill. App. 3d 1068, 1079-81, 523 N.E. 2d 1222, 1229-30 (1988) (asserting general jurisdiction over a Florida trucking firm that made, on average, a dozen trips annually to Illinois for local consignees); *Connelly v. Uniroyal, Inc.*, 75 Ill. 2d 393, 406, 389 N.E. 2d 155, 161 (1979), cert, denied, 444 U.S. 1060 (1980) (asserting general jurisdiction over Belgian tire manufacturer on ground that its product regularly entered Illinois).

to its traditional bases—the place of incorporation and the principal place of business. They are at the furthest remove from the Illinois courts.

a. In *Nichols v. G.D. Searle & Co.*, 991 F. 2d 1195 (4th Cir. 1993), the defendant had between 17 and 21 employees in the forum state, supervised by a district manager who was also in the state; it held meetings in the forum, made purchases in the forum, entered into a contract with a forum state firm, and made between $9 million and $13 million of sales in the forum. The Fourth Circuit held that these contacts were insufficient to justify the assertion of general jurisdiction. 991 F. 2d at 1198-1200. This decision obviously cannot be reconciled with the decision below in this case: in *Nichols*, not only were substantial sales made in the forum, but—unlike here—the defendant had a substantial and continuous physical presence there.

Similarly, in *Hughes v. A.H. Robins Co.*, 490 A. 2d 1140 (D.C. 1985), the defendant sent sales representatives into the District of Columbia, maintained an office there for limited purposes, and made over $3 million worth of sales in the District; the court ruled that these contacts were insufficient to establish general jurisdiction. See *id.* at 1142-43, 1150-51. In *Ratliff v. Cooper Laboratories, Inc.*, 444 F. 2d 745 (4th Cir.), cert. denied, 404 U.S. 948 (1971), the defendant had obtained a license to do business in the forum state, appointed an agent to receive service of process, and maintained five agents in the state to promote its products and occasionally take orders (*id.* at 746); the court ruled that there was no general jurisdiction. See *id.* at 748. See also *Glater v. Eli Lilly & Co.*, 744 F. 2d 213 (1st Cir. 1984); *Congoleum Corp. v. DLW Aktiengesellschaft*, 729 F. 2d 1240, 1242 (9th Cir. 1984) ("[N]o court has ever held that the maintenance of even a substantial sales force within the state is a sufficient contact to assert jurisdiction in an unrelated cause of action.").

b. Other courts, when faced with facts essentially similar to those in this case—in which there were substantial sales but no physical presence in the forum—have held, in direct contradiction to the Illinois courts, that the Due Process Clause does not permit the exercise of general jurisdiction. In *Bearry v. Beech Aircraft Corp.*, 818 F. 2d 370 (5th Cir. 1987), for example, the Fifth Circuit reversed the district court's assertion of general jurisdiction even though the defendant provided (in the court of appeals' own words) an "enormous stream of commerce" into the forum (*id.* at 375), totaling $250 million in sales and $195 million in purchases. The defendant also occasionally sent representatives into the state in connection with its sales and purchases. *Id.* at 373.

In sharp contrast to the court below, the Fifth Circuit explicitly rebuked the district court for not attaching weight to the fact that the defendant had completed the transactions in its home state, not in the forum. See 818 F. 2d at 375 (emphasis omitted) ("The district court [mistakenly] characterized the sales made by [the defendant] to Texas dealers as occurring in Texas, even though all such sales were negotiated in and completed in Kansas").

c. Even some courts that have allowed a relatively expansive scope to general jurisdiction have been careful to draw a line short of the extreme position of the Illinois courts. For example, in *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F. 3d 560, 570-71 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996), 519 U.S. 1007 (1996), the court upheld the assertion of general jurisdiction, but only after carefully noting all of the various contacts: not just relationships with firms in the forum state, but sales to addresses in the forum state (a contact that does not exist here, because petitioners sold and delivered electricity only outside of Illinois); an office that the defendant had maintained in the forum state, staffed by an employee (another contact not present here); and numerous trips by employees of the defendant to the forum state on matters related to the defendant's business.

The Second Circuit, in *Metropolitan Life*, suggested that these contacts had to be taken together to establish general jurisdiction. See 84 F. 3d at 570-71. And even then, the court ruled that, although the defendant had the necessary contacts to sustain general jurisdiction, the assertion of general jurisdiction would be unfair and would accordingly violate due process. *Id.* at 573-75. *Metropolitan Life*, too, must be regarded as inconsistent with the rulings of the Illinois courts—although it is also in disagreement with the decisions of circuits that adopt a narrower view of general jurisdiction. See also *Anthem Ins. Cos. v. Tenet Healthcare Corp.*, 730 N.E. 2d 1227, 1238-40 (Ind. 2000) (frequent business trips to Indiana, and "contract[s] with several Indiana businesses" justify assertion of general jurisdiction).

The Supreme Court of Louisiana has also emphasized the importance of physical presence in the forum, asserting general jurisdiction over a foreign corporation but carefully noting that its basis for doing so was that the corporation had "installed a major semi-global corporate office in this state"—one of only four such offices that it had throughout the world. *De Reyes v. Marine Management and Consulting, Ltd.*, 586 So. 2d 103, 113 (La. 1991); see *id.* at 104; *id.* at 108 ("[I]t is evident that the conducting of business regularly out of a corporate office in the forum state is considered as an extremely substantial step toward creating jurisdiction.") In contrast, the Illinois courts in this case brushed aside the fact that none of the petitioners had any office of any kind in Illinois.

d. A number of courts have, however, taken the same approach as the Illinois courts, and upheld the exercise of general jurisdiction just because the defendant made significant sales to customers from the forum state. In *Ex parte Newco Manufacturing Co.*, 481 So. 2d 867 (Ala. 1985), the Alabama Supreme Court asserted general jurisdiction over a firm that had no employees or agents in the state but that engaged in "annual sales in Alabama* * * rang[ing] from

$65,000 to $85,000." *Id.* at 869. The court explained—in language like that of the Illiniois appellate court below—that these contacts were sufficient because they were "deliberate rather than fortuitous" (*id.* at 869). See also *Ex parte United Brotherhood of Carpenters and Joiners*, 688 So. 2d 246, 251-52 (Ala.), cert. denied, 521 U.S. 1118 (1997); *Atlanta Auto Auction, Inc. v. G&G Auto Sales, Inc.*, 512 So. 2d 1334, 1335-36 (Ala. 1987).

The Sixth Circuit held that the Due Process Clause would permit Michigan courts to assert general personal jurisdiction over a firm that had "no real estate, bank accounts or telephone listings in Michigan [and] did not participate in trade shows or other promotional events in Michigan" because the firm made regular sales in Michigan of $625,000 over a two-year period, approximately 3% of the firm's total sales. *Michigan National Bank,* 888 F. 2d at 466. Perhaps even more extreme, in *Provident National Bank v. California Federal Savings & Loan Ass'n*, *supra*, the Third Circuit held that general jurisdiction could be asserted over a firm that had no offices, employees, or agents in the forum state; the basis for general jurisdiction was a bank account that the firm had there. The Third Circuit dismissed the suggestion that the bank account in the forum state was too small a part of the defendant's business, in either percentage or absolute terms, to justify the assertion of general jurisdiction; the court instead declared that the question was whether the forum state activities were "central to the conduct of its business * * * the bread and butter of its daily business." 819 F. 2d at 438. Neither of these decisions can be reconciled with the decisions of the Fourth and Fifth Circuits, which disapproved the assertion of general jurisdiction when contacts were much more substantial.

2. The extent of disagreement can be seen even in cases that, like this one, involved facilities located near a state border. In *Buddensick v. Stateline Hotel, Inc.*, 972 P. 2d 928 (Utah Ct. App. 1998), cert. denied, 982 P. 2d 88 (Utah 1999),

cert. denied, 528 U.S. 928 (1999), the plaintiff slipped and fell in a casino that was located in Nevada adjacent to the Utah border. See 972 P. 2d at 929. The Utah Court of Appeals—invoking a twelve-part test—held that Utah could constitutionally assert general jurisdiction over the casino. See *id.* at 930-31. The Utah court also relied on the notion—derived from specific jurisdiction cases—that "when a foreign corporation specifically targets citizens of another state, the corporation can reasonably be expected to have to defend itself in that forum." *Id.* at 931 (citations omitted).

In *Cubbage v. Merchent*, 744 F. 2d 665 (9th Cir. 1984), cert. denied, 470 U.S. 1005 (1985), however, the court was faced with similar facts and reached the opposite result. In *Cubbage*, a California plaintiff brought a malpractice action, in federal district court in California, against a hospital located in Arizona "in a sparsely populated desert region near the Arizona/California border" in a town that was connected to California by a bridge. See 744 F. 2d at 667. Two doctors who practiced at the hospital were also named as defendants. Over one-quarter of the hospital's patients were California residents, and both the hospital and the doctors had obtained reimbursement from a California state program. *Id.* at 668. The hospital circulated advertising that reached California. *Id.* at 667.

The Ninth Circuit ultimately held that the defendants were subject to specific jurisdiction, but only after it had unequivocally rejected the plaintiff's claim that the district court could exercise general jurisdiction over the defendants. 744 F. 2d at 667-68. The Ninth Circuit explained: "[T]he doctors are not California residents, are not licensed in California, and did not treat [the plaintiff] in California; the hospital is not located, licensed or incorporated in California." *Ibid.* The Hammond power plant, like the hospital in *Cubbage*, is near a state border and does substantial business with forum state entities; but, like the hospital, none of the petitioners is "located, licensed, or incorporated" in the forum state.

3. Finally, there is profound disagreement among the state and lower federal courts on the relationship between general and specific jurisdiction. The court below concluded that petitioners were subject to the court's jurisdiction because they had "purposefully directed their activities toward" Illinois (see, *e.g.*, Pet. App. 32a) and because their contacts were not "random, fortuitous, or attenuated." Pet. App. 33a. These notions are drawn from *specific* jurisdiction cases. See, *e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), quoting *Hanson*, 357 U.S. at 253. Other courts have drawn on specific jurisdiction concepts in the same way. See, *e.g.*, *de Reyes*, 586 So. 2d at 108; *Anthem Ins. Cos.*, 730 N.E. 2d at 1240; *Buddensick*, 982 P. 2d at 931; *Metropolitan Life Ins. Co.*, 84 F. 3d at 572 (suggesting that contacts are sufficient to justify general jurisdiction if they are "more than sporadic and occasional").

This conflation of specific and general jurisdiction is unjustifiable. The Fifth Circuit has recognized as much, expressly disapproving the use of the specific jurisdiction notion of "stream of commerce" in a general jurisdiction case. See *Bearry*, 818 F. 2d at 375. General and specific jurisdiction serve wholly different purposes, and it is simply a misconception—perhaps fostered by this Court's near-exclusive concentration on specific jurisdiction—to suppose that general jurisdiction requires no more than an enhanced form of the contacts that might justify specific jurisdiction.

If anything, the Court's great expansion of the permissible scope of specific jurisdiction is a reason *not* to expand general jurisdiction: there is less need for general jurisdiction when a suit may easily be brought in a state that has a connection to the claim. Again, some lower courts have recognized this point. As the Fourth Circuit explained:

> [B]ecause specific jurisdiction has expanded tremendously, plaintiffs now may generally bring their claims in the forum in which they arose. As a result,

> "obsolescing notions of general jurisdiction," which functioned primarily to ensure that a forum was available for plaintiffs to bring their claims, have been rendered largely unnecessary. Thus, broad constructions of general jurisdiction should be generally disfavored.

Nichols v. G.D. Searle & Co., 991 F. 2d at 1200 (citations omitted). See also *Follette v. Clairol, Inc.*, 829 F. Supp. 840 (W.D. La. 1993). The classic academic discussion of personal jurisdiction—an article that this Court has cited with approval several times, including in *Helicopteros,* see 466 U.S. at 414 n.8, 415 n.9—reaches the same conclusion. See Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-44, 1177-79 (1966).

4. The expansion of general jurisdiction in several state and federal courts, and the disagreement among the state and lower federal courts, have produced highly damaging consequences. Vague and expansive conceptions of general jurisdiction breed "endless, fact-specific litigation" (*Burnham v. Superior Court*, 495 U.S. 604, 628 (1990) (White, J., concurring)). Unlike the situation with specific jurisdiction, which is bounded by the requirement that the contact be related to the claim, there is no end to the information that might be used to try to establish general jurisdiction: every advertisement, every sale, every visit, letter, telephone call, or electronic mail, that the defendant's personnel might have had with anyone in the forum state— over an indefinite period preceding the litigation—is potentially relevant, and subject to discovery.

More important, the expansion of general jurisdiction threatens, as we have said, to inaugurate an entirely new jurisdictional regime in the United States—one in which corporate defendants can routinely be sued on any claim in a state of the plaintiff's choosing. This is inconsistent with fundamental principles of due process and federalism; it also

produces distortions throughout the legal system. When parties have an unfettered choice of the forum in which they will bring a suit, enormous pressure is placed on questions of choice of law, and on the aspects of our legal system that are designed to ensure that the subject matter of litigation is connected to the forum, such as transfer under 28 U.S.C. 1404(a). See, *e.g.*, *Ferens v. John Deere Co.*, 494 U.S. 516 (1990); *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985). If these developments in judicial federalism are to occur, it should be because this Court has decided that they are acceptable, not because of an accumulation of inconsistent decisions in the state and lower federal courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FOURTH DIVISION

No. 1-99-3015

RICHARD T. ALDERSON, ROBERT A. KALLOK, CYRIL SMOTRILLA, DAVID ARCURI, AND PAUL DANIELSON, PLAINTIFFS-APPELLEES,

v.

SOUTHERN COMPANY; SOUTHERN ENERGY, INC.; SOUTHERN ENERGY RESOURCES, INC.; SOUTHERN ENERGY TRADING AND MARKETING, INC.; SEI STATE LINE, INC.; STATE LINE HOLDING CORPORATION; AND STATE LINE ENERGY, L.L.C., DEFENDANTS-APPELLANTS (SOUTHERN ENERGY NORTH AMERICA, INC.; SOUTHERN ELECTRIC INTERNATIONAL, INC. AND COMMONWEALTH EDISON), DEFENDANTS.

March 22, 2001
Rehearing Denied May 9, 2001

Justice BARTH delivered the opinion of the court:

I. INTRODUCTION

The appellants in this case are affiliated corporations that allegedly owned, possessed, or operated the premises where the accident giving rise to this dispute occurred. They appeal from the order of the circuit court which denied their motions to dismiss the actions against them for lack of in personam jurisdiction. We affirm in part, reverse in part, and remand the cause to the circuit court for further proceedings.

II. BACKGROUND

The complaints in these consolidated cases stem from injuries plaintiffs Richard T. Alderson, Robert A. Kallok, Cyril Smotrilla, Paul Danielson, and David Arcuri sustained in a July 28, 1998, coal dust explosion at the State Line Generating Station (Power Plant) in Hammond, Indiana (Hammond). The Power Plant abuts the Indiana Illinois state line. Plaintiffs are employees of Indiana contractors that were performing services at the Power Plant at the time of the explosion. Alderson, Kallok, Arcuri, and Danielson are Indiana residents.

The complaints name as defendants Southern Company (Southern), Southern Energy, Inc. (Southern Energy), Southern Energy Resources, Inc. (Southern Energy Resources), Southern Energy Trading and Marketing, Inc. (Southern Energy Trading and Marketing), Southern Electric International, Inc. (Southern Electric International), Southern Energy North America, Inc. (Southern Energy North America), State Line Energy, L.L.C. (State Line Energy), SEI State Line, Inc. (SEI), State Line Holding Corp. (State Line Holding), and Commonwealth Edison. Plaintiffs alleged that all defendants other than Commonwealth Edison (hereinafter referred to collectively as defendants) owned and operated the Power Plant on the date of the accident.

The complaints contain counts against defendants sounding in negligence and res ipsa loquitur and allege general negligence in the operation and maintenance of the Power Plant. Defendants filed a special appearance and a motion to dismiss for lack of in personam jurisdiction. In the motion, defendants asserted that they do not transact business, own property, maintain offices, or have employees in Illinois and attached affidavits of officers or employees to support these assertions.

The trial court granted plaintiffs leave to conduct limited discovery on the issue of jurisdiction before responding to the

motion. Discovery revealed the following pertinent facts. Southern is essentially a holding company organized primarily to acquire and hold the securities of electric power, light and gas, and other public utility companies. It is the parent corporation of Southern Energy. Southern Energy North America is a wholly-owned subsidiary of Southern Energy. Southern Energy North America owns SEI and State Line Holding. Southern Energy Trading and Marketing was the entity within the Southern organization which facilitated the trading of energy resources among utility companies. According to deposition witnesses, in September 1997, Southern Energy Trading and Marketing merged with another corporation to form Southern Company Energy Marketing. Southern Energy Trading and Marketing maintains a registered agent for service of process in Illinois. Each defendant just described is a Delaware corporation and has its principal office in Georgia.

SEI and State Line Holding own State Line Energy. State Line Energy is an Indiana limited liability company and owns the power plant and its equipment. State Line Energy has no employees. All personnel at the Power Plant on the date of the accident were employees of Southern Energy Resources. Many of the workers employed at the Power Plant are Illinois residents. As is the case with State Line Energy, most of the Southern entities do not have employees but instead draw their personnel from Southern Energy Resources. A subsidiary of Southern Energy, Southern Energy Resources is a Delaware corporation, has its principal office in Georgia, and maintains a registered agent for service in Illinois. Plaintiffs served summons upon the Illinois registered agents of Southern Energy Trading and Marketing and Southern Energy Resources. With the exception of the suits filed in connection with the July 28, 1998, incident, defendants have never been sued in Illinois.

Pursuant to an Asset Sale Agreement dated April 17, 1996, State Line Energy purchased the Power Plant from Commonwealth Edison Company of Indiana, Inc., a wholly-owned subsidiary of Commonwealth Edison. On that same date, State Line Energy executed a Power Purchase Agreement under which it agreed to supply the Power Plant's electrical output exclusively to Commonwealth Edison for 15 years. This agreement required State Line Energy to commit the Power Plant's normal operating capacity, 490 megawatts at the time the parties entered into the agreement, to Commonwealth Edison. The Power Purchase Agreement also granted Commonwealth Edison a right of first refusal regarding any power generated beyond 490 megawatts.

Commonwealth Edison retained title to equipment on the Power Plant premises to enable it to take title to the electricity at that location. It distributed the power from there to its customers. Both the Asset Sale Agreement and the Power Purchase Agreement were executed in Illinois and contained Illinois choice-of-law provisions. The notice provisions in both agreements directed that communications to State Line Energy be sent to the offices of SEI in Georgia.

There are several other agreements that define the relationship between State Line Energy and Commonwealth Edison. Pursuant to a Coal Supply Agreement dated December 29, 1997, Commonwealth Edison agreed to supply all of the coal required to satisfy State Line Energy's obligations under the Power Purchase Agreement. The Coal Supply Agreement contained an Illinois choice-of-law provision, a venue provision designating Illinois as the chosen forum for any action to enforce the provisions of the agreement, and a notice provision providing that communications to State Line Energy be sent to its Hammond, Indiana, address.

A Facilities Agreement dated December 30, 1997, sets forth State Line Energy's obligations regarding the maintenance of certain equipment at the Power Plant to ensure the

reliable delivery of electrical power to Commonwealth Edison. The Facilities Agreement also provided for a communications link, in the form of a dedicated telephone line, between the Power Plant and Commonwealth Edison offices in Illinois. The purpose of the dedicated line was to allow the parties to the agreement to communicate regarding output requirements and conditions affecting the output or reliability of the Power Plant. The Facilities Agreement likewise contained an Illinois choice-of-law provision and a notice provision directing that communications to State Line Energy be sent to the offices of SEI in Georgia.

In a Consulting Services Agreement dated January 1, 1998, Commonwealth Edison undertook to provide consulting services to State Line Energy. This agreement contained an Indiana choice-of-law provision and a notice provision directing that any communications to State Line Energy be sent either to a post office box in Chicago or to its Hammond address.

In a Training Services Agreement dated June 10, 1998, Commonwealth Edison agreed to provide emergency response training to State Line Energy at a Commonwealth Edison facility in Illinois. This agreement listed State Line Energy's Chicago post office box address and contained an Illinois choice-of- law provision.

In connection with its purchase of the Power Plant, State Line Energy filed a petition requesting that the Indiana Utility Regulatory Commission (IURC) refrain from asserting jurisdiction over the Power Plant's operation. In the petition, State Line Energy stated that, because of its obligations under the Power Purchase Agreement, it would not be making any sale of power to a retail customer in Indiana or elsewhere. The petition further stated that the "Illinois Commerce Commission is currently conducting hearings on the proposed transaction and impacts in Illinois where most, if not all, of the Plant's output will be utilized. It is not anticipated that any of the Plant's power will be sold or used in Indiana at

wholesale or retail." The petition further represented that, as an exempt wholesale generator, State Line Energy was subject to the regulation of the Federal Energy Regulatory Commission and that Illinois, in effect, would review State Line Energy's transactions through its regulation of Commonwealth Edison.[1]

The discovery materials also contain the deposition testimony of several witnesses. In his deposition, Randall Harrison testified that he is employed by Southern Energy Resources. He was one of the employees primarily responsible for overseeing State Line Energy's purchase of the Power Plant. Discovery materials also reveal that, as of October 12, 1998, Harrison was a vice-president of Southern Energy and a vice-president of Southern Energy Resources. Harrison testified that at least part of the transaction required the approval of the Illinois Commerce Commission. It was his belief that State Line Energy's petition to the IURC was unsuccessful. Harrison testified that the Asset Sale Agreement required the approval of the board of directors of SEI and Southern Energy and the finance committee of the Southern board of directors. According to Harrison, SEI functioned as the manager of the Power Plant and oversaw its day-to-day operations.

At the time he was negotiating the purchase of the Power Plant, Harrison was not aware of where the electricity to be sold to Commonwealth Edison would ultimately be consumed. What Commonwealth Edison did with the electricity after purchasing it was not a concern of any of the Southern entities.

Harrison also testified that, in 1993, Southern Energy made a bid to purchase the Fisk generating station in Illinois, but was unsuccessful. In 1995, Southern Energy made an

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[1] State Line Energy asserts that it has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois. *See* 220 ILCS 5/8-406 (West 1996).

unsuccessful bid to purchase the Kincaid generating station, also in Illinois.[2] At the time Harrison gave the deposition, the Southern companies were considering purchasing other Illinois generating stations from Commonwealth Edison.

Harrison's deposition reveals that he and other employees of the various Southern Companies made several trips to Illinois during the course of the negotiations surrounding the purchase of the Power Plant and in connection with attempts to purchase other Commonwealth Edison generating stations. Harrison's testimony also referenced several trips he and other employees made to Illinois before the accident in this case. The purpose of these trips was to attend meetings or trade conferences which had no bearing on the Power Plant purchase or the Kincaid and Fisk proposals. According to Harrison, these meetings did not relate to any actual business being conducted in Illinois. For example, some of these meetings involved projects or business in other states or abroad.

In his deposition, Alan Harrelson testified that he is an employee of Southern Energy Resources and a vice-president of SEI and State Line Holding and has his office in Georgia. Discovery materials reveal that, as of October 12, 1998, Harrelson was a vice-president of Southern Energy and Southern Energy Resources. Harrelson's duties included overseeing the operations of the Power Plant.

Harrelson explained that there were times when the Power Plant's excess capacity was sold to other customers through Southern Company Energy Marketing, the successor-in-interest of Southern Energy Trading and Marketing. Answers to interrogatories reveal that, in July 1998, State Line Energy delivered power to a utility in Ohio. Also in July 1998, State Line Energy sold power to the Illinois Municipal Electric Agency (IMEA). According to answers to interrogatories,

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[2] Answers to interrogatories state, however, that Southern Electric International was the company that bid on the Kincaid plant.

IMEA received and took title to the electricity on the Power Plant premises. Harrelson did not know whether any of this excess capacity was ultimately sold or consumed in Illinois. He also explained that the purpose of the Consulting Services Agreement was to help aid in the transition of the Power Plant's ownership by allowing State Line Energy to utilize the knowledge of certain Commonwealth Edison employees regarding the operation of the Power Plant.

Harrelson testified that Southern advertises nationally, including in Illinois, and maintains an Internet site accessible to Illinois residents. When asked why Southern would advertise in Illinois if it claimed that it did not do business there, Harrelson responded that the purpose of the advertising was to build name recognition in the event any Southern companies ever did conduct business in Illinois. It was Harrelson's belief that the explosion caused instability to Commonwealth Edison's system and resulted in some power outages in Illinois.

In his deposition, Thomas Boren testified that he is the president and chief executive officer of Southern Energy. He is also the president of State Line Holding and Southern Electric International and serves on the board of directors of SEI. Discovery materials reveal that, as of October 12, 1998, Boren served as a senior vice-president of Southern and the president and chief executive officer of Southern Energy Resources.

Boren described Southern Energy as an "umbrella" company that holds all of the common stock of about 200 companies. When asked about SEI and State Line Holding, Boren explained that, sometimes, Southern Energy will form a company "just to do bidding," for tax purposes, "and then ultimately we have companies that actually own the assets that we're doing business out of." Boren's involvement in the purchase of the Power Plant was limited to reviewing the investment opportunity in his capacity as president of

Southern Energy and as a member of the Southern Energy board. He did not participate in the negotiations leading to the purchase.

Boren testified that, in the summer of 1998, Southern Company Energy Marketing entered into a power supply contract with the City of Springfield, Illinois (Springfield). However, Springfield defaulted on that contract, and Southern Company Energy Marketing ended up filing suit against Springfield.

At the time of the accident, Sheri Marcelene Fuller was the president of SEI and a vice-president of State Line Holding. She also was a senior vice- president of Southern Energy and Southern Energy Resources. She was on the board of directors of State Line Holding and SEI, a director and executive vice-president of Southern Energy Trading and Marketing, a vice-president of Southern Electric International, and a director and vice-president of Southern Energy North America. In her deposition, Fuller testified that she is currently an employee of Southern Energy Resources and a director of State Line Energy. She also testified that she was the person ultimately in charge of the Power Plant purchase. She has traveled to the Power Plant twice, both times to attend board meetings.

Fuller estimated that she has traveled to Illinois for business reasons approximately 10 times since 1993. She traveled to the Chicago Board of Trade once because Southern Energy was contemplating entering the commodity trading business. She visited the offices of Duff & Phelps, a credit rating agency in Illinois, to obtain a credit rating for Southern Energy. She also visited Chicago on several occasions in connection with the proposed purchase of power plants from Commonwealth Edison. Fuller also attended meetings in Chicago regarding projects in other states or countries.

Fuller testified that, in August 1997, Southern Energy Trading and Marketing contracted for an option to purchase power from Springfield for delivery in Ohio, and vice versa. Southern Company Energy Marketing exercised the option in the summer of 1998, but Springfield failed to deliver the power as requested. According to Fuller, the suit against Springfield was filed in Georgia.

Also, Southern Company Energy Marketing entered into an alliance with Kinder-Morgan, Inc. (Kinder-Morgan) granting Southern Company Energy Marketing access to Kinder-Morgan's facility in Cora, Illinois, to purchase and sell coal. Finally, Fuller was of the belief that the IURC rejected State Line's petition and asserted jurisdiction over the Power Plant.

Steven Owen testified that he is an Illinois resident and an employee of Southern Energy Resources. He was a business unit manager of State Line Energy at the time of the accident. He explained that, before it purchased the Power Plant, State Line Energy established a Chicago post office box address near the Power Plant. After the purchase, State Line Energy established its official Hammond address. It was Owen's belief that, as of late in June or early in July 1998, State Line no longer maintained the Illinois address. The record contains a memo from Owen to a Commonwealth Edison employee dated June 11, 1998. The memo contains a notice of State Line Energy's change to the Hammond post office box. The letter was printed on State Line Energy's letterhead, which contains the Southern name and logo.

Owen also testified that, in the course of his employment with Southern Energy Resources, he has traveled to Illinois airports and has attended two to three conferences in Illinois. According to Owen, neither Southern nor any of its affiliates maintained a booth at these conferences. Owen's purpose for attending these trips was merely to gather technical

information and to network with others in the industry. Also, on three or four occasions, Owen met in Illinois with employees of Commonwealth Edison.

Owen testified that State Line Energy pays $3,672 per month to store 200 to 225 pallet loads of spare parts at Commonwealth Edison's centralized warehouse. He explained that State Line Energy acquired these parts in connection with the purchase of the Power Plant and that it was in the process of moving them to the Power Plant. It was Owen's understanding that State Line Energy did not pay taxes on the spare parts while they were in Illinois but would have to pay a personal property tax once the parts were moved to Indiana. According to Owen, pursuant to the consulting services agreement, Commonwealth Edison has performed services for State Line Energy, such as testing, that took place in Illinois.

According to Owen, the main entrance to the Power Plant lies just on the Indiana side of the state line, and the private road that leads to the main entrance lies partly in Illinois. It was Owen's understanding that State Line Energy possesses an easement over the road to allow access to the main entrance. The Power Plant has a connection to the City of Chicago sewer system, and the Chicago police and fire departments responded on the day of the explosion. Owen estimated that the sale of electricity to Commonwealth Edison accounted for about $20 to $25 million in annual revenue while sales to other utilities generated less than $1 million in annual revenue.

In his deposition, John Long testified that he is a vice-president of Commonwealth Edison and, before the sale, served as an assistant manager and plant manager at the Power Plant. Long confirmed that Commonwealth Edison takes possession of the electricity at the Power Plant and eventually sells it either to retail or wholesale customers. All of Commonwealth Edison's retail customers are in Illinois.

According to Long, the explosion at the Power Plant did not result in any power outages in Illinois, but did cause momentary decreases in voltage across the Commonwealth Edison system.

Long also explained that the Power Plant supplies its own electricity needs as long as it is in service. If the Power Plant were not in service, then Commonwealth Edison would supply the Power Plant with electricity. The electricity Commonwealth Edison supplies to the Power Plant generally originates in Illinois.

Long further testified that fire brigade workers employed at the Power Plant attended fire and emergency training that Commonwealth Edison conducted at one of its Illinois facilities. Commonwealth Edison also provided emission reports to environmental regulatory agencies on behalf of State Line Energy. To compile these reports, Commonwealth Edison employees in Illinois obtained information via modem from monitoring equipment located at the Power Plant.

In his testimony, Long discussed several trips to Illinois that representatives of various Southern subsidiaries made to Illinois in connection with the purchase of the Power Plant and the proposed purchases of Commonwealth Edison generating stations in Illinois. These trips occurred both before and after the date of the accident. Long also testified that either Southern or one of its affiliated companies had an exhibit at the Edison Electric Institute annual convention in Illinois.

In answers to interrogatories, defendants Southern, Southern Energy, and Southern Energy Resources stated that, between 1993 and June 1998, employees attended 12 trade shows in Illinois. These defendants maintained a booth or exhibit at four of these events. There is no evidence that these defendants actually conducted business at any of these shows.

In a written opinion and order, the trial court granted the motion to dismiss in favor of defendants Southern Electric International and Southern Energy North America but denied the motion with regard to the remaining defendants. The trial court initially found that section 2-209(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-209(a) (West 1998)) did not provide a basis for asserting in personam jurisdiction over any of the defendants because plaintiffs' causes of action did not arise from defendants' alleged transaction of business, ownership, possession, or use of property, or the making of any contract in Illinois.

The trial court next considered whether defendants were subject to in personam jurisdiction because they were "doing business" in Illinois. *See* 735 ILCS 5/2-209(b)(4) (West 1998). The court found that, because they had registered agents in Illinois, defendants Southern Energy Resources and Southern Energy Trading and Marketing were subject to in personam jurisdiction. The trial court further found that, as the operators of the Power Plant, State Line Energy and SEI were doing business in Illinois because Commonwealth Edison, an Illinois company, purchased essentially all of the Power Plant's output. The court also concluded that asserting in personam jurisdiction over State Line Energy and SEI comported with due process principles and, accordingly, that it would be appropriate to assert in personam jurisdiction over these defendants pursuant to section 2-209(c) of the Code (735 ILCS 5/2-209(c) (West 1998)).

The trial court also found that it was appropriate to assert in personam jurisdiction over Southern, Southern Energy, and State Line Holding under the theory set forth in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 68 Ill.Dec. 450, 445 N.E.2d 1303 (1983), *aff'd*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984). According to the court, these defendants "have organized themselves in such a way as to blur the distinction of separate corporate identities

so as to preclude them from asserting that they are separate and distinct corporate identities which prevent the imposition of in personam jurisdiction." The court found, however, that plaintiffs failed to establish sufficient affiliating circumstances to enable the court to exercise in personam jurisdiction over Southern Electric International and Southern Energy North America.

Southern, Southern Energy, Southern Energy Resources, Southern Energy Trading and Marketing, SEI, State Line Holding, and State Line Energy (appellants) petitioned this court for leave to appeal pursuant to Supreme Court Rule 306(a)(3) (166 Ill.2d R. 306(a)(3)). We granted the petition.

On August 8, 2000, Commonwealth Edison filed in the circuit court a cross- claim against State Line Energy. In its claim, Commonwealth Edison seeks indemnity pursuant to the Coal Supply Agreement.[3]

III. DISCUSSION

A. Request to Strike Appellants' Brief

In their reply brief, plaintiffs Alderson, Kallok and Smotrilla have asked this court to strike appellants' brief and dismiss the appeal on the ground that it contains an inadequate statement of facts. These plaintiffs are correct in noting that appellants' 2 1/2-page statement of facts omits most of the facts relevant to the issues raised here and essentially contains only those facts which favor appellants' position.

Supreme Court Rule 341(e)(6) requires that an appellant's statement of facts "contain the facts necessary to an understanding of the case, stated accurately and fairly * * *." 166 Ill.2d R. 341(e)(6). The appellate court has the discretion

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[3] We granted plaintiffs leave to supplement the record on appeal with Commonwealth Edison's cross-complaint.

to strike an appellant's brief and dismiss the appeal as a result of the appellant's failure to provide a complete statement of facts. *Ryan v. Katz*, 234 Ill.App.3d 536, 537, 175 Ill.Dec. 748, 600 N.E.2d 1206, 1207 (1992). The inadequate statement of facts in appellants' brief is significant here because the record on appeal is long and the facts are complex. Although appellants' statement of facts is grossly inadequate, this appeal raises significant issues implicating appellants' constitutional rights, and appellants' brief contains a thorough discussion of those issues. For these reasons, we conclude that the interests of justice require an examination of the merits. *See Luttrell v. Panozzo*, 252 Ill.App.3d 597, 600, 192 Ill.Dec. 540, 625 N.E.2d 695, 698 (1993) (examining merits of appeal in "interests of justice" despite appellant's failure to present cogent argument).

We caution, however, that our decision not to strike appellants' brief "should not be interpreted as a signal that we are willing, as a matter of course, to overlook violations of the Supreme Court Rules in briefs filed with this court. We are not." *Buckner v. Causey*, 311 Ill.App.3d 139, 142, 243 Ill.Dec. 786, 724 N.E.2d 95, 99 (1999). We merely have concluded that the nature of the issues on appeal is such that a review of the merits is warranted.

B. Section 2-209 of the Code

Section 2-209 of the Code states in pertinent part:

> "(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> (1) The transaction of any business within this State;

(2) The commission of a tortious act within this State;

(3) The ownership, use, or possession of any real estate situated in this State;

* * *

(7) The making or performance of any contract or promise substantially connected with this State;

* * *

(b) A court may exercise jurisdiction in any action arising within or without this State against any person who:

* * *

(4) Is a natural person or corporation doing business within this State.

(c) A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.

* * *

(f) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a)." 735 ILCS 5/2-209 (West 1998).

C. Burden of Proof and Standard of Review

A plaintiff has the burden of establishing a prima facie basis for exercising in personam jurisdiction over a defendant. *Kalata v. Healy*, 312 Ill.App.3d 761, 765, 245 Ill.Dec. 566, 728 N.E.2d 648, 651-52 (2000); *International Business Machines Corp. v. Martin Property & Casualty Insurance Agency, Inc.*, 281 Ill.App.3d 854, 857-58, 217 Ill.Dec. 197, 666 N.E.2d 866, 868 (1996). A plaintiff's prima facie case may be overcome by a defendant's uncontradicted

evidence that defeats jurisdiction. *Gaidar v. Tippecanoe Distribution Service, Inc.*, 299 Ill.App.3d 1034, 1041, 234 Ill.Dec. 150, 702 N.E.2d 316, 320 (1998).

When the trial court hears no courtroom testimony and determines jurisdiction solely on the basis of documentary evidence, the trial court is not in a better position than the reviewing court to assess credibility or weigh the evidence. Therefore, in this situation, the standard of review is de novo. *Stein v. Rio Parismina Lodge*, 296 Ill.App.3d 520, 523, 231 Ill.Dec. 1, 695 N.E.2d 518, 521 (1998); *E.A. Cox Co. v. Road Savers International Corp.*, 271 Ill.App.3d 144, 148, 207 Ill.Dec. 815, 648 N.E.2d 271, 275 (1995).

In *Gaidar*, the trial court granted limited discovery on the issue of in personam jurisdiction. The discovery materials included deposition testimony. This court determined that, because there were no conflicts in the evidence or credibility determinations to resolve, the trial court had only a question of law before it. Thus, a de novo standard of review was appropriate. *Gaidar*, 299 Ill.App.3d at 1039-40, 234 Ill.Dec. 150, 702 N.E.2d at 319. Here, there exists no material dispute regarding the facts uncovered during discovery, only the legal conclusions to be drawn from those facts. Accordingly, it is appropriate to review the trial court's ruling de novo.

D. Long-Arm Statute: Section 2-209(a) of the Code

Plaintiffs Alderson, Kallok, and Smotrilla argue that trial court properly could have asserted jurisdiction over appellants pursuant to section 2-209(a) of the Code. State Line Energy entered into several agreements with Commonwealth Edison in connection with the purchase of the Power Plant. These agreements were executed in Illinois and contained Illinois choice-of-law provisions. Also, to the extent that it possessed easement rights over the road leading to the Power Plant entrance, State Line Energy used or possessed real estate located in Illinois.

Where jurisdiction is predicated upon section 2-209(a), only causes of action arising from the enumerated acts may be asserted against a nonresident defendant. 735 ILCS 5/2-209(f) (West 1998). The purpose of the statutory phrase "arising from" is to ensure that there is a close relationship between a cause of action against a nonresident defendant and its jurisdictional activities. *Gaidar*, 299 Ill.App.3d at 1046, 234 Ill.Dec. at 157, 702 N.E.2d at 323 (plaintiff's cause of action for injuries sustained in Indiana automobile accident did not arise from defendant's transaction of business in Illinois even though defendant's truck had been in Illinois earlier on day of accident). A plaintiff's claim must be one that lies in the wake of commercial activities by which the defendant submitted to the jurisdiction of Illinois. *Kalata*, 312 Ill.App.3d at 767, 245 Ill.Dec. 566, 728 N.E.2d at 653.

Here, plaintiffs' causes of action do not arise from any of defendants' contracts or transactions in Illinois. Plaintiffs' injuries arise from State Line Energy's operation and maintenance of the Power Plant and not from any acts directly connected with the performance of the agreements with Commonwealth Edison. *See, e.g., Cook Associates, Inc. v. Lexington United Corp.*, 87 Ill.2d 190, 198-99, 57 Ill.Dec. 730, 429 N.E.2d 847, 850-51 (1981) (Illinois employment agency's breach of contract action seeking payment of placement commission did not arise out of foreign corporation's activities in Illinois; although corporation interviewed candidate in Illinois initially, candidate rejected offer and later interviewed and accepted offer for different position).

Plaintiffs are not parties to any of the Illinois transactions involving State Line Energy and are not seeking to recover for a breach of any of the agreements underlying these transactions. *See, e.g., D.S. America (East) Inc. v. Elmendorf Grafica, Inc.*, 274 Ill.App.3d 643, 650-51, 211 Ill.Dec. 10, 15-16, 654 N.E.2d 472, 477-78 (1995); *Swissland Packing Co. v. Cox*, 255 Ill.App.3d 942, 944, 194 Ill.Dec. 349, 627

N.E.2d 686, 688 (1994); *G.M. Signs, Inc. v. Kirn Signs, Inc.*, 231 Ill.App.3d 339, 172 Ill.Dec. 933, 596 N.E.2d 212 (1992). Instead, plaintiffs are asserting premises liability claims that arose in Indiana and do not arise from any of the Illinois contracts or transactions. *See, e.g., Huffman v. Inland Oil & Transport Co.*, 98 Ill.App.3d 1010, 1016, 54 Ill.Dec. 306, 424 N.E.2d 1209, 1214 (1981) (plaintiff's cause of action for injuries sustained while working on defendant's towboat in Alabama did not arise from commercial activities of defendant in Illinois).

Plaintiffs also contend that their causes of action arise out of the Illinois transactions between State Line Energy and Commonwealth Edison by virtue of the maintenance obligations that the Facilities Agreement and the Coal Supply Agreement impose upon State Line Energy. In support of their contention, plaintiffs point to Commonwealth Edison's cross- claim against State Line Energy. These considerations do not change our conclusion. The contractual obligations here do not relate to plaintiffs' common-law premises liability claims. Both the Facilities Agreement and the Coal Supply Agreement contain provisions to the effect that nothing in those agreements shall be construed to create any duty or standard of care with reference to any person who is not a party to those agreements. One of the concepts underlying the "arising out of" analysis is that "individuals and corporations must be able to conduct interstate business confident that transactions in one context will not come back to haunt them unexpectedly in another." *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1278 (7th Cir.1997). Here, it is not reasonably foreseeable that the individual agreements State Line Energy entered into with Commonwealth Edison would provide the sole basis for an Illinois court to assert in personam jurisdiction over State Line Energy for a premises liability action arising in Indiana.

In a similar vein, plaintiffs' causes of action do not arise out of State Line Energy's use of its easement over the Illinois portion of the road leading to the Power Plant. Plaintiffs' actions have no connection to State Line Energy's use of this real estate other than the fact that plaintiffs may have had to use this road to enter the Power Plant on the date of the accident. Plaintiffs sustained their injuries while performing work on the Power Plant premises and not while they were using the road.

For these reasons, the trial court correctly concluded that section 2-209(a) of the Code does not provide a basis for asserting jurisdiction over State Line Energy or any of the other defendants.

E. Doing Business—Section 2-209(b)(4) of the Code

The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum. *Cook Associates*, Inc., 87 Ill.2d at 201, 57 Ill.Dec. 730, 429 N.E.2d at 852 [4]; *Stein*, 296 Ill.App.3d at 527, 231 Ill.Dec. 1, 695 N.E.2d at 523; *Natural Gas Pipeline Co. v. Mobil Rocky Mountain, Inc.*, 155 Ill.App.3d 841, 843, 108 Ill.Dec. 50, 508 N.E.2d 211, 212 (1986) (*Mobil Rocky Mountain*). The defendant must transact business in Illinois "'not occasionally or casually, but with a fair measure of permanence and continuity.'" *Stein*, 296 Ill.App.3d at 527, 231 Ill.Dec. 1, 695 N.E.2d at 523, quoting *Cook Associates, Inc.*, 87 Ill.2d at 203, 57 Ill.Dec. 730, 429 N.E.2d at 853. Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. *Gaidar*, 299 Ill.App.3d at 1041, 234 Ill.Dec. 150, 702 N.E.2d at 320;

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[4] The Illinois courts applied the doing-business doctrine before it became a part of section 2-209 effective in 1989. *Gaidar*, 299 Ill.App.3d at 1041, 234 Ill.Dec. 150, 702 N.E.2d at 320.

Radosta v. Devil's Head Ski Lodge, 172 Ill.App.3d 289, 293, 122 Ill.Dec. 302, 526 N.E.2d 561, 564 (1988). Once the doing business standard is satisfied, the defendant is deemed a resident of Illinois and may be sued on causes of action both related and unrelated to its Illinois activities. *Mobil Rocky Mountain*, 155 Ill.App.3d at 843, 108 Ill.Dec. 50, 508 N.E.2d at 212.

We begin with an analysis of the activities of State Line Energy and conclude that the undisputed facts affirmatively demonstrate that State Line Energy is "doing business" in Illinois. State Line Energy committed to sell the Power Plant's electrical output to Commonwealth Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison. The contracts establishing this relationship were entered into in Illinois and made subject to Illinois law. As State Line Energy's petition to the IURC reveals, State Line Energy fully realized and anticipated that "most, if not all" of the Power Plant's output would be consumed in Illinois.

State Line Energy relies heavily on the fact that it maintains no offices or sales activities in Illinois, that Commonwealth Edison takes "title" to the electricity in Indiana, and that it has never obtained a certificate of public convenience and necessity from the Illinois Commerce Commission which would enable it to transact business in Illinois. State Line Energy's reliance on these facts ignores the economic reality of its business. Although courts upholding the exercise of in personam jurisdiction over foreign corporations pursuant to section 2-209(b)(4) have based their findings on factors such as offices or sales activities in Illinois, each case requires an independent determination of whether, under all of the circumstances, it would be fair to subject a defendant to the jurisdiction of the Illinois courts. *Colletti v. Crudele*, 169 Ill.App.3d 1068, 1079-81, 120 Ill.Dec. 311, 523 N.E.2d 1222, 1229 (1988)

(Florida trucking company, which made an average of a dozen trips to Illinois per year for local industrial consignees, conducted sufficient in-state activities to subject it to in personam jurisdiction under "doing business" doctrine upon claim arising from Kentucky automobile accident).

In *Connelly v. Uniroyal, Inc.*, 75 Ill.2d 393, 27 Ill.Dec. 343, 389 N.E.2d 155 (1979), the court held that the substantial profit-making activities of a nonresident manufacturer in Illinois invokes the benefits of the forum state so that, when its goods cause injury because of a defect, Illinois courts will hold the defendant amenable to service of process. *Connelly*, 75 Ill.2d at 404-06, 27 Ill.Dec. 343, 389 N.E.2d at 160. In *Connelly*, a tire on an automobile purchased in Illinois caused injury to the plaintiff while he was riding the automobile in Colorado. The defendant that manufactured the tire was a Belgian corporation with no direct presence in Illinois. It manufactured tires in Belgium and sold them to General Motors in Belgium. General Motors assembled the automobiles in Belgium and shipped them to the United States for distribution. The evidence revealed that, during each of the years in question, between 3,235 and 6,630 automobiles equipped with the defendant's tires were delivered for sale in Illinois. In upholding the exercise of in personam jurisdiction over the Belgian manufacturer, the *Connelly* court relied on the fact that its product came into Illinois regularly and in substantial numbers. *Connelly*, 75 Ill.2d at 406, 27 Ill.Dec. 343, 389 N.E.2d at 160.

In *Mobil Rocky Mountain*, the court declined to apply *Connelly* outside the context of a product liability action. *Mobil Rocky Mountain*, 155 Ill.App.3d at 843, 108 Ill.Dec. 50, 508 N.E.2d at 213. Thus, substantial revenues from sales in Illinois are not enough to satisfy the "doing business" standard in cases not involving product defects. *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill.App.3d 308, 319, 171 Ill.Dec. 670, 594 N.E.2d 1190, 1198 (1992).

Because plaintiff's causes of action here do not involve injuries resulting from the sale of State Line Energy's product, the jurisdictional issue presented here does not fall squarely within the framework of *Connelly*. However, in addition to continuous and substantial revenues derived from the sale of its product to an Illinois utility, there exists activity specifically directed toward the Illinois market. State Line Energy has established an essentially exclusive relationship with Commonwealth Edison that, as a practical matter, serves as the basis for its existence. The core purpose of this relationship is to generate electrical power, primarily for ultimate consumption in Illinois. Therefore, this is not a situation where State Line Energy plausibly can claim as fortuitous the fact that the electricity it generates in Indiana ultimately is consumed in Illinois. Also, because the Power Plant sits on the state line, receives some services from the City of Chicago and Commonwealth Edison, and makes use of an easement in Illinois to facilitate entrance into the Power Plant, State Line Energy is more like a resident of Illinois than most out-of-state businesses. For these reasons, the fact that State Line Energy maintains no offices in Illinois and does not directly deliver its product into Illinois is of less significance. *See Japax, Inc. v. Sodick Co.*, 186 Ill.App.3d 656, 663-64, 134 Ill.Dec. 446, 542 N.E.2d 792, 796-97 (1989) (where Japanese manufacturer's products came into Illinois as part of plan to sell regularly in Illinois, manufacturer was "doing business" in Illinois even though products leaving Japanese plant were initially sold in Japan to intermediaries who sold products in United States).

State Line Energy's claim that it lacks a certificate of public convenience and necessity pursuant to section 8-406 of the Public Utilities Act (220 ILCS 5/8-406 (West 1996)) and therefore cannot "do business" in Illinois is unavailing. The Public Utilities Act governs generating facilities within Illinois. 220 ILCS 5/3-105 (West 1996). The purpose of

requiring a certificate of public convenience and necessity is to prevent unnecessary duplication of facilities and to protect the public from inadequate service and higher rates resulting from such duplication, while simultaneously protecting a utility against indiscriminate or ruinous competition. *Citizens United for Responsible Energy Development, Inc. v. Illinois Commerce Comm'n*, 285 Ill.App.3d 82, 89, 220 Ill.Dec. 738, 673 N.E.2d 1159, 1165 (1996). There is nothing in the Public Utilities Act which forecloses a conclusion that, by delivering electrical power wholesale to an Illinois utility, State Line Energy is "doing business" in Illinois.

Defendants cite to three decisions that merit discussion here. In *Mobil Rocky Mountain*, the defendant was a Delaware corporation with its headquarters in Colorado. The plaintiff was a Delaware corporation that bought and sold natural gas and had its headquarters in Illinois. It entered into a natural gas purchase contract with a supplier, which later assigned its rights under the contract to the defendant. The original parties negotiated and signed the contract outside of Illinois. The contract called for the defendant to deliver the gas to the plaintiff in Wyoming, where title passed. When the market price for natural gas fell below the contract price, the plaintiff brought a declaratory judgment action in Illinois to dispute the quantity term in the contract.

In concluding that the "doing business" standard was not satisfied, the court stated:

> "Defendant never conducted business within Illinois, nor did it maintain offices or employees here. Furthermore, it never solicited business in Illinois. It merely sold gas to an Illinois resident for distribution in Illinois and presumably elsewhere. Such business activities do not demonstrate that defendant is doing business so that it may be deemed a resident of Illinois. [Citation .] We are not persuaded that by merely delivering gas to a forum plaintiff outside of Illinois pursuant to one

> contract [defendant] has 'purposefully availed itself of the market for its products' in Illinois." *Mobil Rocky Mountain*, 155 Ill.App.3d at 845, 108 Ill.Dec. 50, 508 N.E.2d at 213-14.

Mobil Rocky Mountain is distinguishable because, unlike the defendant there, State Line Energy has purposefully directed its activities toward the Illinois market. The Power Purchase Agreement and the other relevant agreements are Illinois contracts. Also absent from *Mobil Rocky Mountain* is the exclusivity present here: State Line Energy has committed to sell the Power Plant's base output to an Illinois customer.

In *Huck v. Northern Indiana Public Service Co.*, 117 Ill.App.3d 837, 73 Ill.Dec. 230, 453 N.E.2d 1365 (1983), the plaintiffs were injured in Indiana when the antenna on which they were working came into contact with a power line through which the defendant's electricity flowed. The defendant (NIPSCO) maintained no offices, solicited no business, and had no employees, agents or customers in Illinois.

Pursuant to an interconnection agreement with Commonwealth Edison and Commonwealth Edison Company of Indiana, "NIPSCO will on occasion buy, sell, or interchange power with [Commonwealth Edison] which will utilize the [Commonwealth Edison Company of Indiana] transmission facilities for delivery or receipt of this electric power within the state of Indiana." *Huck*, 117 Ill.App.3d at 841, 73 Ill.Dec. 230, 453 N.E.2d at 1369. NIPSCO's physical plant and equipment dedicated to its arrangement with Commonwealth Edison were located entirely in Indiana. The electricity that defendant supplied to Commonwealth Edison "might" move into Illinois through equipment owned by others in Illinois. Also, the defendant purchased 40% to 50% of its coal from Illinois and used trains leased from an Illinois company to transport the coal, used Illinois banks, owned natural gas pipelines in Indiana that connected to pipelines in Illinois, and used Illinois radio and television stations to advertise.

The court found that these contacts did not rise to the level of "doing business." It also found that no substantial ongoing business contacts between the defendant and Illinois existed as a result of the interconnection agreement. *Huck*, 117 Ill.App.3d at 841, 73 Ill.Dec. 230, 453 N.E.2d at 1368-69. There is nothing in the court's recitation of the facts in *Huck* that suggests NIPSCO maintained the continuous business contacts with Illinois that are present here. To the contrary, the evidence was that, "on occasion," NIPSCO sold power to Commonwealth Edison. Accordingly, *Huck* is distinguishable from this case.

For the same reasons, *Stephens v. Northern Indiana Public Service Co.*, 87 Ill.App.3d 961, 42 Ill.Dec. 808, 409 N.E.2d 423 (1980), which also involved NIPSCO and a similar interconnection agreement, is distinguishable. Additionally, in *Stephens*, the interconnection agreement was between NIPSCO and Commonwealth Edison Company of Indiana. As a result, Commonwealth Edison received power from NIPSCO indirectly. *Stephens*, 87 Ill.App.3d at 968-69, 42 Ill.Dec. 808, 409 N.E.2d at 428.

Although we find that State Line Energy was "doing business" in Illinois, the Illinois activities of the remaining defendants, when viewed apart from the activities of State Line Energy, do not rise to the level of "doing business" in Illinois.[5] The trial court relied solely on plaintiffs' service upon an Illinois registered agent to assert in personam jurisdiction over Southern Energy Trading and Marketing and Southern Energy Resources. The designation of an Illinois registered agent is not an independently determinative factor, however, in determining whether a foreign corporation is doing business in Illinois. *Colletti*, 169 Ill.App.3d at 1080,

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[5] Because plaintiffs have not cross-appealed the dismissals of Southern Electric International and Southern Energy North America, we make no findings regarding these defendants.

120 Ill.Dec. 311, 523 N.E.2d at 1230. There is nothing in section 2-209 of the Code that supports asserting in personam jurisdiction over a corporate defendant simply because the plaintiff served summons upon the defendant's Illinois registered agent.

The primary Illinois contacts attributable to other defendants are trips to Illinois in connection with proposed business ventures, attendance at trade shows, and advertising. Transient contact, such as attendance at trade shows, advertising, or mere solicitation, has been rejected as a jurisdictional basis under section 2-209(b)(4). *Cook Associates, Inc.*, 87 Ill.2d at 203, 57 Ill.Dec. 730, 429 N.E.2d at 853; *Kadala v. Cunard Lines, Ltd.*, 226 Ill.App.3d 302, 315, 168 Ill.Dec. 402, 589 N.E.2d 802, 810 (1992); *Radosta*, 172 Ill.App.3d at 295, 122 Ill.Dec. 302, 526 N.E.2d at 565. Therefore, these contacts clearly do not rise to the level of "doing business."

The other relevant contacts here involve Southern Energy Trading and Marketing, namely, its arrangements with Springfield and Kinder-Morgan. However, Southern Energy Trading and Marketing exercised its option with Springfield only once, and the record contains no evidence regarding the extent of its dealings with Kinder-Morgan. Therefore, these facts do not support a conclusion that Southern Energy Trading and Marketing was conducting business in Illinois with sufficient regularity to warrant a finding that it was "doing business."

F. *Maunder v. DeHavilland Aircraft of Canada, Ltd.*

We next consider whether it would be appropriate to assert jurisdiction over any of the appellants other than State Line Energy under the theory recognized in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984). The trial court concluded that certain defendants organized themselves so as to "blur the distinction of separate corporate identities." This is not the determinative factor in *Maunder*, however.

The theory underlying *Maunder* is that, if a subsidiary corporation is acting as the parent corporation's Illinois agent in the sense of conducting the parent's business rather than its own, then it is appropriate to assert jurisdiction over the parent. Parents of wholly-owned subsidiaries necessarily control, direct, and supervise subsidiaries to some extent. If, however, the subsidiary is conducting its own business, then an Illinois court may not assert in personam jurisdiction over the parent simply because it is the parent. *IDS Life Insurance Co. v. SunAmerica Life Insurance Co.*, 136 F.3d 537, 540-41 (7th Cir.1998). Also, standing alone, the existence of common officers or directors serving both corporations is not sufficient to confer jurisdiction over a nonresident parent corporation. *People v. Parsons Co.*, 122 Ill.App.3d 590, 598, 78 Ill.Dec. 74, 461 N.E.2d 658, 664 (1984).

In *Maunder*, the plaintiffs were injured when an airplane manufactured by the defendant, a Canadian corporation, crashed in Africa. The defendant's wholly-owned subsidiary was a Delaware corporation with its principal office in Illinois. The subsidiary sold and distributed parts for airplanes manufactured by defendant and was the defendant's only distributor in the United States. The defendant and the subsidiary shared most of their officers and used a combined financial statement. The court held that the defendant was "doing business" in Illinois through its subsidiary. *Maunder*, 102 Ill.2d at 352, 80 Ill.Dec. at 770, 466 N.E.2d at 222. In reaching the same conclusion, the appellate court in *Maunder* stated:

> "Defendant regularly and systematically reaped substantial profits through the sale of its parts by its Illinois subsidiary. * * * In light of the control exercised by defendant over [the subsidiary] coupled with its own activities directed at promoting the sale of its product in Illinois, we hold that defendant is actively and systematically doing business in Illinois and is therefore

subject to the jurisdiction of Illinois courts." *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 883, 68 Ill.Dec. 450, 445 N.E.2d 1303, 1306 (1983), *aff'd*, 102 Ill.2d 342, 80 Ill.Dec. 765, 466 N.E.2d 217 (1984).

Here, the evidence discloses that, as an owner of State Line Energy, SEI functioned as the manager of the Power Plant and oversaw its day-to-day operations. There is no indication that SEI existed for any other purpose. Therefore, pursuant to *Maunder*, SEI clearly was doing business in Illinois through State Line Energy. The same conclusion obtains with regard to State Line Holding. Harrelson testified that he was a vice-president of both SEI and State Line Holding and that his duties included overseeing the operations of the power plant. As is the case with SEI, there is no indication that State Line Holding existed for any purpose other than to hold the assets and oversee the operation of State Line Energy.

The evidence also warrants a conclusion that Southern and Southern Energy were doing business through State Line Energy. Southern is merely a holding company that has established many subsidiaries to carry out its business. The appearance of the Southern name and logo on State Line Energy's letterhead amply demonstrates this fact. Also telling is Southern's practice of conducting national name-recognition advertising, apparently on behalf of Southern subsidiaries operating in various regions.

Similarly, Southern Energy is primarily a holding company doing business through its subsidiaries. As the testimony of Boren, the president of Southern Energy, reveals, Southern Energy is an "umbrella company" and many of the subsidiary corporations were formed simply to bid on projects or investments, merely for tax purposes, or to own the assets that "we're doing business out of." State Line Energy certainly fits the profile of a subsidiary formed for this purpose.

There is additional evidence of the control that Southern and Southern Energy exerted over State Line Energy. Harrison was a vice-president of Southern Energy and one of the parties primarily responsible for the purchase of the Power Plant. A further indication of control is that the purchase required the approval of the board of directors of Southern Energy and the finance committee of the Southern board of directors. Viewed as a whole, the evidence affirmatively demonstrates that State Line Energy was a "conduit" through which Southern and Southern Energy did business. *See Parsons Co.*, 122 Ill.App.3d at 598, 78 Ill.Dec. 74, 461 N.E.2d at 664.

We believe that applying *Maunder* to Southern, Southern Energy, State Line Holding, and SEI is consistent with the principle underlying that decision, namely, that "a corporation should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its sales force and other operations in each state." *IDS Life Insurance Co.*, 136 F.3d at 541.

Because we have concluded the trial court erroneously found that Southern Energy Resources and Southern Energy Trading and Marketing were " doing business" in Illinois, we briefly consider whether it would be appropriate to apply Maunder to these defendants. Because these two defendants are not parent corporations of State Line Energy, they do not fit within the Maunder framework. Southern Energy Resources supplies State Line Energy with all of its employees. Southern Energy Trading and Marketing acts in the capacity of a broker and on occasion and sells electricity generated at the Power Plant. Unlike a parent corporation such as Southern, neither Southern Energy Resources nor Southern Energy Trading and Marketing is using State Line Energy as a means for generating revenue through the sale of electricity in a specified market. Therefore, despite the close

functional relationship existing between these corporate entities, there is no basis for a conclusion that either Southern Energy Resources or Southern Energy Trading and Marketing is doing business through State Line Energy.

G. Section 2-209(c) of the Code—Due Process

The Legislature added subsection (c) to section 2-209 of the Code in 1989. Illinois courts have treated section 2-209(c) as an independent basis for asserting in personam jurisdiction over a defendant. *Flint v. Court Appointed Special Advocates of Du Page County, Inc.*, 285 Ill.App.3d 152, 165, 221 Ill.Dec. 38, 674 N.E.2d 831, 841 (1996); *Allerion, Inc. v. Nueva Icacos, S.A.*, 283 Ill.App.3d 40, 47, 218 Ill.Dec. 632, 669 N.E.2d 1158, 1163 (1996). Thus, an Illinois court may exercise personal jurisdiction over a nonresident defendant as long as the exercise of such jurisdiction offends neither federal nor state guarantees of due process.

Federal due process requires that, in order to exercise in personam jurisdiction over a nonresident defendant, it is necessary that the defendant have certain "minimum contacts" with the forum state such that the maintenance of the suit there does not offend "'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 283 (1940). Those minimum contacts must have a basis in "'some act by which the defendant purposefully avails itself of the privilege of conducting activities wit n the forum State, thus invoking the benefits and protections of its laws.'" *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109, 107 S.Ct. 1026, 1030, 94 L.Ed.2d 92, 102 (1987), quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528, 542 (1985). Satisfaction of this requirement ensures that an alien

defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts, or the unilateral act of a consumer or some other third person. *Burger King Corp.*, 471 U.S. at 475, 105 S.Ct. at 2183, 85 L.Ed.2d at 542.

A court conducting a federal due process analysis must consider whether (1) the nonresident defendant had "minimum contacts" with the forum state such that there was "fair warning" that the nonresident defendant may be hailed into a forum court; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state. *Burger King Corp.*, 471 U.S. at 471-77, 105 S.Ct. at 2181-84, 85 L.Ed.2d at 540-44; *Kalata*, 312 Ill.App.3d at 768-69, 245 Ill.Dec. 566, 728 N.E.2d at 654.

The "minimum contacts" and "fair warning" requirements are satisfied if the defendant has purposefully directed his activities at Illinois residents, reached out beyond one state to create continuing relationships with citizens of another state, or purposefully derived benefits from its activities within the forum state. *Burger King Corp.*, 471 U.S. at 471-74, 105 S.Ct. at 2181-83, 85 L.Ed.2d at 540-41; *Kalata*, 312 Ill.App.3d at 769, 245 Ill.Dec. 566, 728 N.E.2d at 655. As we discussed in connection with the "doing business" analysis, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have purposefully directed their activities toward Illinois residents, namely, Commonwealth Edison and its customers, and have reached out to create continuing relationships with those residents. Because these defendants have directed their activities toward the Illinois marketplace and have derived economic benefit as a result of those activities, the fact that the sale of electricity to Commonwealth Edison is technically carried out in Indiana is of no consequence.

The meaning of the "minimum contacts" standard depends upon whether the forum asserts "specific" or "general" jurisdiction. Specific jurisdiction refers to jurisdiction over a defendant in a suit "arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8, 104 S.Ct. 1868, 1872 n. 8, 80 L.Ed.2d 404, 411 n. 8 (1984). General jurisdiction refers to suits neither arising out of nor related to the defendant's contacts, and it is permitted only where the defendant has "continuous and systematic general business contacts" with the forum. *Helicopteros*, 466 U.S. at 416, 104 S.Ct. at 1873, 80 L.Ed.2d at 412.

In specific jurisdiction cases, the action must directly arise out of the contacts between the defendant and the forum. *RAR, Inc.*, 107 F.3d at 1278 (rejecting a "but for" causal analysis). For reasons similar to those we stated in connection with our analysis under section 2-209(a) of the Code, plaintiffs' premises liability actions do not arise directly out of defendants' contacts with Illinois.

We conclude, however, that Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have maintained continuous and systematic business contacts with Illinois that support the assertion of general jurisdiction over them. We base our conclusion on many of the same factors supporting our conclusion that these defendants are "doing business" in Illinois. These defendants, through State Line Energy, agreed to commit the Power Plant's normal operating capacity to an Illinois utility exclusively for 15 years. Therefore, their contacts with Illinois cannot be characterized as random, fortuitous, or attenuated. *See Quaker Oats Co. v. Chelsea Industries, Inc.*, 496 F.Supp. 85, 88 (N.D.Ill.1980) (assertion of jurisdiction over alien corporations in cause arising from out-of-state activities was sufficiently continuous and systematic to satisfy due process concerns where, over period of several years, corporations sold

substantial amounts of their products to customers located in Illinois and sent representatives to Illinois on several occasions to meet with customers).

We also find that, in light of their substantial activities directed at the Illinois marketplace, it is reasonable to require these defendants to litigate these actions in Illinois. For these reasons, asserting jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy does not violate federal due process requirements.

We also find that asserting in personam jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy is permissible under the Illinois Constitution. Due process in Illinois requires that "[j]urisdiction is to be asserted only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 Ill.2d 244, 275, 152 Ill.Dec. 384, 565 N.E.2d 1302, 1316 (1990). Through their operation and management of the Power Plant, Southern, Southern Energy, State Line Holding, SEI, and State Line Energy have engaged in economic activities which have a substantial effect upon interests located in Illinois. The record demonstrates that Commonwealth Edison and the Illinois residents it serves are dependent upon the electricity the Power Plant generates. In light of these defendants' substantial connections with Illinois, it is "fair, just, and reasonable" to require them to defend these actions in Illinois.

Finally, we conclude that section 2-209(c) does not provide a basis for asserting in personam jurisdiction over either Southern Energy Resources or Southern Energy Trading and Marketing. The record does not reveal any connection between Southern Energy Resources and Illinois other than the fact that some of its employees happen to reside in Illinois. With regard to Southern Energy Trading and

Marketing, the record reveals only sporadic business transactions in Illinois that do not rise to the level of continuous and systematic business contacts. Therefore, to require these two defendants to defend these actions in an Illinois court would not comport with due process principles.

IV. CONCLUSION

For the foregoing reasons, we conclude that the trial court properly asserted in personam jurisdiction over Southern, Southern Energy, State Line Holding, SEI, and State Line Energy. We also conclude, however, that the exercise of in personam jurisdiction over Southern Energy Resources and Southern Energy Trading and Marketing was improper. Accordingly, the rulings of the circuit court are affirmed in part and reversed in part, and this cause is remanded for further proceedings consistent with the views expressed herein.

Affirmed in part and reversed in part; cause remanded.

HARTMAN, P.J., and HOFFMAN, J., concur.

APPENDIX B

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

No. 91722

RICHARD T. ALDERSON, *et al.*,
Respondents,

v.

SOUTHERN COMPANY, *et al.*,
Petitioners.

October 3, 2001

Mr. Michael E. O'Neill
Eichhorn & Eichhorn
200 Russell Street
Hammond, IN 46320

Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

McMorrow, J., took no part.

The mandate of this Court will issue to the Appellate Court on October 25, 2001.

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY
ILLINOIS COUNTY DEPARTMENT
LAW DIVISION

[Filed Aug. 2, 1999]

No. 98 L 9058 B
Consolidated with:
98 L 9216
98 L 9486
98 L 9731
98L 10614

RICHARD T. ALDERSON, *et al.*,
Plaintiff,

v.

SOUTHERN COMPANY, *et al.*,
Defendants.

OPINION & ORDER

This cause coming to be heard on Defendants', Southern Company, Southern Energy, Inc., Southern Energy Resources, Inc., State Line Energy, L.L.C., SEI State Line, Inc., State Line Holding Corp., Southern Energy Trading and Marketing, Inc., Southern Electric International, Inc., and Southern Energy North America, Inc., Motion., to Dismiss pursuant to Section 5/2-209 of the Illinois Code of Civil Procedure for lack in personam jurisdiction, this Court, being fully advised of the premises, having read the briefs of the parties and having heard oral arguments, finds:

IN PERSONAM JURISDICTION

Defendants' Motion to Dismiss for lack of in personam jurisdiction is granted as it pertains to Defendants Southern

Electric International, Inc., and Southern Energy North America, Inc. Defendants' Motion to Dismiss for lack of in personam jurisdiction is denied as it pertains to Defendants Southern Company, Southern Energy, Inc., Southern Energy Resources, Inc., Southern Energy Trading and Marketing, Inc., State Line Energy, L.L.C., State Line Holding Corp., and SEI State Line, Inc

This cause of action arises from injuries Plaintiffs sustained while providing maintenance work for the State Line Generating Station in Hammond, Indiana. On July 28, 1998, plaintiffs were working at the State Line Generating Station when an explosion occurred. Plaintiffs' lawsuit is based upon the alleged negligent maintenance of the State Line Generating Station.

In response to Plaintiffs' complaint, all Defendants (hereinafter "Defendants"), with the exception of Commonwealth Edison, claim that they are not amenable to in personam jurisdiction in the State of Illinois. Plaintiffs, however, assert that Defendants are subject to jurisdiction based on Illinois Long-Arm Statute, Sections 2-209 (a)(1), (a)(3), (a)(7), (b)(4), and (c) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-209.

When jurisdiction over a non-resident is premised upon the Illinois Long-Arm Statute, the Court must apply a two-step analysis to determine whether jurisdiction is proper. First, the Court must determine if Defendants' actions fall under Section 2-209 the Illinois Code of Civil Procedure. 735 ILCS 5/2-209. Second, and only after jurisdiction is found to be proper under the long-arm statute, the Court should determine if the exercise of jurisdiction comports with the due process clauses of the Illinois and United States Constitutions. *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill.2d 304, 311, 489 N.E.2d 1360 (1986).

735 ILCS 5/2-209(a)

Initially, Plaintiffs claim that Defendants are subject to the jurisdiction of this Court because of certain acts committed by Defendants. Specifically, Plaintiffs claim that Defendants should be subject to jurisdiction based upon the following; subsection 2-209(a)(1), Defendants were transacting business in the State of Illinois; subsection 2-209(a)(3), Defendants owned, used, or possessed any property in Illinois; and, subsection 2-209(a)(7), Defendants made or performed any contract or promise substantially connected to this State. However, Section 2-209 (a) also adds a sentence of limitation which states that jurisdiction can be asserted only if the cause of action arises "from the doing of any such acts." 735 ILCS 5/2-209(a). Moreover, Section 2-209(f) reiterates that "only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a)." 735 ILCS 5/2-209(f).

In support, Plaintiffs argue that the purchase of the State Line Generating Station by Defendants from Commonwealth Edison is enough to assert jurisdiction. Plaintiffs offer as evidence numerous trips taken to Illinois and contracts entered into to effectuate the sale of the State Line Generating Station as proof that Defendants were transacting business and entering into contracts; thereby subjecting Defendants to in personam jurisdiction. In addition, Plaintiffs assert that Defendants used property in Illinois to warehouse spare parts; thereby subjecting Defendants to in personam jurisdiction. Lastly, Plaintiffs provide evidence of an easement held by Defendants in which one had to cross over the state line for entrance into the State Line Generating Station as evidence of in Personam jurisdiction based upon subsection 2-209(a)(3).

Upon closer examination, however, Plaintiffs have failed to establish how the cause of action in this case, i.e. negligent maintenance, arose out of the sale of the State Line

Generating Station, ownership of an easement or warehousing spare parts. Therefore, since there is no evidence to establish that any of these acts committed by Defendants gave rise to this cause of action, this Court cannot establish in personam jurisdiction based upon Section 2-209(a), or any of its subsections alleged by Plaintiffs.

735 ILCS 5/2-209(b)(4)

Plaintiffs claim that Defendants are nonetheless subject to in personam jurisdiction under Section 2-209(b)(4) which states that "[a] court may exercise jurisdiction in any action arising within or without this State against any person who . . . is a natural person or corporation *doing business* within this State." 735 ILCS 5/2-209(b)(4) (emphasis added).

In order for an Illinois court to hold the Defendants amenable to in personam jurisdiction, it must apply a more stringent test than the federal government's "minimum contacts" test. *Rollings v. Ellwood*, 141 Ill.2d 244, 565 N.E. 2d 1302, 1315-17 (1990). A defendant generally is doing business in Illinois when he operates in Illinois not occasionally or casually but with a fair measure of permanence and continuity. *Cook Associates, Inc., v. Lexington United Corp.*, 87 Ill.2d 190, 429 N.E.2d 847, 853 (1981). "A finding that a corporation is doing business in Illinois generally requires that the corporation conduct business in Illinois 'of such a character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of Illinois.' *Huck v. Northern Indiana Public Service Co. (NIPSCO II)* 117 Ill. App. 3d 837, 839, 453 N.E.2d 1365, 1368 (1st Dist. 1983) quoting *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill. App. 3d 879, 882, 445 N.E.2d 1303 (1st Dist. 1983).

"Although there may be no such all-inclusive (doing business] test, almost all Illinois cases determining the existence of personal jurisdiction over foreign corporations

have based their findings upon the existence of factors such as offices or sales activities in Illinois." *NIPSCO II*, 117 Ill. App. 3d at 839. These factors are particularly helpful with regard to Defendants Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., who had registered agents in the State of Illinois with offices located in Illinois. In fact, both Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., were served in their respective offices in Illinois. Based on these facts, Southern Energy Resources, Inc., and Southern Energy Trading and Marketing, Inc., are subject to in personam jurisdiction.

Next, Plaintiffs assert that Defendants State Line Energy, L.L.C. and SEI State Line, Inc., should be amenable to personal jurisdiction as owners/operators and managers of the State Line Generating Station, respectively. Moreover, SEI State Line, Inc., owned a controlling interest in State Line Energy, L.L.C. State Line Energy, L.L.C. purchased the plant from Commonwealth Edison approximately seven (7) months prior to the explosion. State Line Energy, L.L.C., in addition to other Defendants, took place in numerous negotiations regarding the sale and operation of the plant in Hammond, Indiana. As a result of the negotiations and purchase of the State Line Generating Station from Commonwealth Edison, an agreement was reached that the State Line Generating Station would sell *all* of its power to Commonwealth Edison *only*. This agreement was to last fifteen (15) years. As a result, the only revenue from the safe of energy at the State Line Generating Station was based on its sales to Commonwealth Edison, an Illinois corporation.

Defendants claim that this is insufficient to hold Defendants amenable to in personam jurisdiction. Defendants assert that the instant case is analogous to two Illinois cases, *Stephens v. Northern Indiana Public Service Co. (NIPSCO I)*, 87 Ill.App.3d 961, 409 N. E.2d 423 (5th Dist. 1980), and *Huck*

v. Northern Indiana Public Service Co., (NIPSCO II), 117 Ill.App.3d 837, 453 N. E.2d 1365 (1st Dist. 1983). In both *NIPSCO I* and *NIPSCO II* Illinois courts found that the same energy-producing, non-resident defendant was not subject to in personam jurisdiction. In *NIPSCO I* and *NIPSCO II* the plaintiff attempted to establish in personam jurisdiction based on NIPSCO's contracts with power companies in Illinois. However, unlike the instant case, the Appellate Courts were dealing with a Defendant that had an interconnection agreement between it and a second, unrelated Indiana corporation, Commonwealth Edison Company of Indiana. The Appellate Court in *NIPSCO I* stated that "defendant was not 'doing business' in [Illinois], where from time to time it sold electricity to other power companies through interconnection agreements which were part of a nationwide 'grid' system and conceivably some of the power generated by defendant found its way to customers of other power companies in [Illinois]." *NIPSCO*, 187 III. App. 3d at 970.

The facts of these two cases upon which Defendants rely are clearly distinguishable. In this case, State Line Energy, L.L.C., and SEI State Line, Inc., sold all its electricity *only* to Commonwealth Edison, an Illinois Corporation. State Line Energy, L.L.C., and SEI State Line, Inc., were aware that all of the power generated at the Station was contracted to go to an Illinois corporation, and subsequently to Illinois residents. The Defendant NIPSCO's relationship was much more tenuous than the relationship between Illinois and Defendants State Line Energy, L.L.C. and SEI State Line, Inc.

Therefore, State Line Energy, L.L.C. and SEI State Line, Inc.'s activities with the State of Illinois are sufficiently permanent and continuous to qualify as doing business in Illinois. However, the inquiry does not end there; State Line Energy, L.L.C. and SEI State Line, Inc.'s activities in Illinois must also comport with the due process clauses of the United

States and Illinois Constitutions. For a non-resident defendant to be subject to in personam jurisdiction, that defendant must have sufficient "minimum contacts with the state that jurisdiction will not offend tradition al notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In addition, the defendants in this case must have contacts sufficient enough to give them fair warning that it might be haled into court in that state. *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 474 (1984).

As stated previously, State Line Energy, L.L.C., contracted with Commonwealth Edison, an Illinois Corporation, to sell all of the electricity generated at the State Line Generating Station for fifteen (15) years. State Line Energy L.L.C.'s product, electricity, was continuously exchanging hands on a daily basis. Therefore, it can reasonably be said that defendants State Line Energy L.L.C. and SEI State Line, Inc., as its manager, engaged in "purposeful activity related to the forum that would make the exercise of jurisdiction fair, just or reasonable." *Rush v. Savchuk*, 444 U.S. 320, 329 (1980).

Lastly, the Defendants State Line Energy, L.L.C. and SEI State Line, Inc.'s purposeful activity must also comport with the due process clause of the Illinois Constitution in order for this Court to assert in personam jurisdiction. According to the Illinois Supreme Court, "jurisdiction is to be asserted only when it is fair, just and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of. the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 111.2d 244, 275, 565 N.E.2d 1302, 1316 (1990). Defendants State Line Energy L.L.C. and SEI State Line, Inc.'s acts of selling all of the electricity generated at the State Line Generating Station greatly affect interests located in Illinois. In contracting for the purchase and

distribution of the Station's electricity *solely* with Illinois, it is reasonable to expect defendant State Line Energy L.L.C. and SEI State Line, Inc., to defend an action in Illinois.

Therefore, for these reasons Defendants State Line Energy L.L.C. and SEI State Line, Inc. are amenable to in personam jurisdiction in this Court.

735 ILCS 5/2-209(c)

Lastly, Plaintiffs assert that in personam jurisdiction can be established under Section 2-209(c) of the Illinois Code of Civil Procedure which states that "a court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c). Illinois Courts have interpreted this section of the Long-Arm Statute broadly. *See Ores v. Kennedy*, 218 Ill.App.3d 866, 578 N. E.2d 1139 (1st Dist. 1991) (The amended statute merely provides a means of obtaining jurisdiction over a nonresident defendant to the full extent permitted by the due process clause of the United States Constitution.) As previously stated, both State Line Energy L.L.C. and SEI State Line, Inc., are subject to in personam Jurisdiction. under due process clauses of the Illinois and United States Constitutions. Therefore, in addition to Section 2-209(b)(4), in personam jurisdiction can also be asserted under Section 2-209(c).

Southern Company, Southern Energy, Inc., and State Line Holding Corp. are also subject to in personam jurisdiction based upon the *alter ego* theory set forth in *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 112 Ill.App.3d 879, 445 N.E. 2d 1303 (1st Dist. 1983). To say that the corporate structure of parent company Southern Company and its subsidiaries is complicated is a gross understatement. Southern Company, a holding corporation, is the parent company to Southern Energy, Inc., a wholly owned subsidiary. Southern Energy, Inc., is an "umbrella" company

which owns approximately eight (8) other subsidiaries in their entirety, in addition to partial ownership interests in numerous other subsidiaries. All Defendants in the instant case are Southern Company subsidiaries.

In *Maunder*, one dispositive factor the First District Appellate Court looked at in order to make a decision was the degree of control exercised by the parent company over the wholly owned subsidiary. *Maunder*, 122 Ill.App.3d at 883. In the instant case, it is difficult to ascertain where one corporation ends and another begins. Southern Company is a holding company, without any employees. Southern Energy Inc., directly under Southern Company, conducts the actual business. All Southern Energy Company employees are paid by another corporation, Southern Energy Resource, Inc., which is licensed to do business in Illinois. The corporate structure of these companies is so complex that, on a given day, even an employee is not sure of exactly which company he works for. This is illustrated by the testimony of one employee, Mr. Randall Harrison, who at his deposition had to take a break in order to determine which company he actually worked for; after a phone call he concluded that he was an employee of Southern Energy Resources, Inc. Moreover, it is not uncommon for an executive to hold many high-level positions at multiple corporations in the Southern Company family. For example, Randall Harrison, while vice president of Southern Energy Resources, Inc., and Southern Energy, Inc., acted on behalf of SEI State Line, Inc., and State Line Energy L.L.C., for the purchase of the State Line Generating Station. In addition, Alan Harrelson was a vice president of SEI State Line, Inc., and of State Line Holding Corporation, while also an employee of Southern Energy Resources and Southern Electric International. Also, Marce Fuller was president of SEI State Line, Inc., and vice president of State Line Holding Corporation.

Even the company's letterhead did not separate corporations from each other. The letterhead for State Line Energy, L.L.C., at the top of the page had Southern Company's logo. In addition, Southern Company takes on the role of advertising nationwide for its business. This worldwide promotion also includes advertisement in the State of Illinois.

This Court finds that Southern Company and all of its. subsidiaries, with the exception of Southern Electric International, Inc., and Southern Energy North America, Inc., have organized themselves in such a way as to blur the distinction of separate corporate identities so as to preclude them from asserting that they are separate and distinct corporate identities which prevent the imposition of in personam jurisdiction.

Regarding the two remaining Defendants, Southern Electric International, Inc., and Southern Energy North America, Inc., Plaintiffs have failed to establish sufficient affiliating circumstances to enable this Court to exercise in personam jurisdiction.

ACCORDINGLY, IT IS HEREBY ORDERED:

Defendants' Motion to Dismiss for lack of in personam jurisdiction is granted as it pertains to Defendants Southern Electric International, Inc., and Southern Energy North America, Inc. Defendants' Motion to Dismiss for lack of in personam jurisdiction is denied as it pertains to Defendants Southern Company, Southern Energy, Inc., Southern Energy-Resources, Inc., Southern Energy Trading and Marketing, Inc., State Line Energy L.L.C. State Line Holding Corp., and SEI state Line, Inc.

/s/ William Maddux
Judge, No. 1559

APPENDIX D

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 99-3015

RICHARD T. ALDERSON, *et al.*,
Plaintiffs-Appellees,

vs.

SOUTHERN COMPANY, SOUTHERN ENERGY, INC., SOUTHERN ENERGY RESOURCES, INC., SOUTHERN ENERGY TRADING AND MARKETING, INC., STATE LINE ENERGY, LLC, SEI STATE LINE, INC., AND STATE LINE HOLDING CORP.,
Defendants-Appellants.

Appeal from the Circuit Court
of Cook County, Illinois
County Department, Law Division

No. 98 L 9058
CONSOLIDATED WITH:
98 L 9216
98 L 9486
98 L 9731
98 L 10614

THE HONORABLE WILLIAM D. MADDUX,
JUDGE PRESIDING

REPLY BRIEF OF
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March 1, 2000

* * * * *

II.

THE CIRCUIT COURT'S ORDER VIOLATES DEFENDANTS' CONSTITUTIONAL DUE PROCESS RIGHTS

In *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), the State of Texas asserted personal jurisdiction over a Colombian corporation (Helicol) that had done business in Texas for several years. The basis of the cause of action was a helicopter crash in Peru that killed four American passengers. The helicopter had been purchased by Helicol from Bell Helicopter, a Texas firm, and was being used under contract to transport the American employees of a Texas-based corporation. The Texas Supreme Court asserted "general" jurisdiction over Helicol because of its "numerous and substantial" contacts with the forum. *See, Hall v. Helicopteros Nacionales de Columbia*, 638 S.W.2d 870, 874 (Tex. 1982). The U.S. Supreme Court granted certiorari to decide whether the Supreme Court of Texas had correctly ruled that a foreign corporation's "contacts" with the State of Texas were sufficient to allow a Texas state court to assert

jurisdiction over the corporation "in a cause of action not arising out of or related to the corporation's activities within the State." *Helicopteros*, 466 U.S. at 409.

After reviewing the specific contacts, unrelated to plaintiff's wrongful death tort action, the Supreme Court reversed. *Helicopteros*, *supra*, 466 U.S. at 419. In doing so, the Supreme Court first reiterated the oft-stated due process standards—emphasizing the critical distinction (apparently lost on plaintiffs in this case) between "specific" and "general" jurisdiction:

> The Due Process Clause of the Fourteen Amendment operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant. Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of in personam jurisdiction. Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation.

466 U.S. at 413-14 (citations omitted).[1]

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[1] The *Helicopteros* court specifically defines and distinguishes the "specific" and "general" jurisdiction concepts in two (2) footnotes. *See*, *Helicopteros*, *supra*, 466 U.S. 408, 414, n. 8 ("specific jurisdiction") and n. 9 ("general jurisdiction") and law journal articles cited therein.

Turning to its due process "minimum contacts" analysis, the Supreme Court noted that like the State Line Energy defendants herein, "[i]t is undisputed that Helicol [the non-resident corporate defendant] does not have a place of business in Texas and never has been licensed to do business in the State." *Id.* at 416. Instead, Helicol's general "contacts" with Texas had consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter in Texas for substantial sums; and sending personnel to Bell's facilities in Fort Worth, Texas for training. 466 U.S. at 416.

Notwithstanding the fact Helicol had negotiated a service contract with plaintiffs' decedents' employer *in Texas*, purchased the helicopters *in Texas* used to conduct its business, and had numerous contacts through visits by its employees *to Texas*, the Supreme Court concluded that assertion of jurisdiction by Texas "in a cause of action not related to those [contacts]," did not comport with the Fourteenth Amendment's Due Process Clause because none of the activities, including the numerous visits to Texas and purchase of Texas goods and services, were sufficiently continuous and systematic to permit assertion of jurisdiction over a tort claim which arose *outside of Texas*. *Id.* at 418. In reaching its conclusion, the *Helicopteros* court turned to *Rosenberg Brothers & Co., Inc. v. Curtis Brown*, 260 U.S. 516 (1923), for the proposition that jurisdiction based upon business visits into the forum "even if occurring at regular intervals," *Id.* at 518, could not satisfy the minimum contacts test "without making a mockery of due process limitations on assertion of personal jurisdiction." 466 U.S. at 418. We could not state the proposition more accurately.

Here, plaintiffs seek to affirm a circuit court's order asserting "general" jurisdiction over the non-resident State

Line Energy defendants for contacts unrelated to the litigation which can only be fairly characterized as sporadic and incidental. While defendants do not contest that State Line Energy has easement rights over an Illinois roadway leading to the Indiana border and State Line Energy's Indiana entrance and likewise acknowledges it temporarily stored spare parts at a ComEd warehouse in Illinois after the sale of the plant was completed, these incidental contacts, unrelated to plaintiffs' premises liability claims, are constitutionally insufficient to base jurisdiction in Illinois. In *Shaffer v. Heitner*, *supra*, the U.S. Supreme Court held that the mere "presence of property" in a State does not establish a sufficient relationship between the owner of the property and the State to support the exercise of jurisdiction in cases "*where the property . . . is completely unrelated to the plaintiff's cause of action.*" *Heitner*, *supra*, 433 U.S. at 209. Here, no one contends the "easement" or "spare parts" are in any way related to the coal dust explosion which allegedly caused plaintiffs' injuries.

The business of the State Line Energy defendants is to generate and sell electricity. The circuit court, contrary to law and fact, based jurisdiction on the incorrect premise that State Line Energy sells its power *in Illinois*. As set out in our opening brief to this court, it does not. Defendant Commonwealth Edison takes title to and then transports the electric power out of Indiana on its own transmission lines (C. 223, 569, 727, 735, 746, 751, 775, 791), and "[s]uch unilateral activity *of another party* . . . is not an appropriate consideration when determining *whether a defendant* has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, *supra*, 466 U.S. at 417 (emphasis added); *see*, *also*, *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) ("The unilateral activity of those [like ComEd] who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State").

Therein lies the critical constitutional error in the circuit court's exercise of jurisdiction over the State Line Energy defendants. State Line Energy simply has no "minimum contacts" or "affiliating circumstances" in Illinois which rise to the constitutionally required level nor are any of the incidental contacts with Illinois recited by plaintiffs "related to the plaintiffs' cause of action." *Heitner*, *supra*, 433 U.S. at 209. To hold otherwise would make "a mockery of due process limitations on assertion of personal jurisdiction." *Helicopteros*, *supra*, 466 U.S. at 418.

The *Helicopteros* opinion rests soundly on the earlier holding in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), wherein the Supreme Court first announced that a defendant must have "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. Critically, the *International Shoe* court explained that the boundaries between "those activities" which justify subjecting a corporation to jurisdiction and those which do not cannot be simply mechanical or quantitative. The test is not "merely . . . whether the activity, which the corporation has seen fit to procure . . . in another state, is a little more or a little less." *Id.* at 319. Instead, the constitutional due process inquiry "must depend rather upon the *quality and nature* of the activity . . . which it was the purpose of the due process clause to insure." *Id.* (emphasis added).

No such due process insurance was allowed State Line Energy here. The circuit court failed to analyze the "quality and nature" of State Line Energy's contacts *in Illinois* in asserting personal jurisdiction over this non-resident. Instead, the court simply discounted the legal significance of *Huck v. Northern Indiana Public Service Co.*, 117 Ill.App.3d 837, 453 N.E.2d 1365 (1st Dist. 1983) and *Stephens v. Northern Indiana Public Service Co.*, 87 Ill.App.3d 961, 409 N.E.2d

423 (5th Dist. 1980) by first quantifying the relevant "contact" (i.e., "[State Line Energy] sold *all* its electricity only to Commonwealth Edison"; Order, A. 6); and then mistaking where this defining contact occurred (i.e., "[State Line Energy's] activities *with the State of Illinois* are sufficiently permanent and continuous to qualify as doing business." Order, A. 7). However, the undisputed facts demonstrate that State Line Energy has not "seen fit to [sell its electricity] in another state," *International Shoe*, *supra*, at 319. Instead, it generates, sells and delivers all of its output of electricity in Indiana. (C. 223, 569, 727, 746, 751, 775, 791). Accordingly, the fact State Line Energy, quantitatively, sells "a little more or a little less," *Id.*, than its total output of electricity to defendant ComEd, in Indiana, is simply not a sufficient basis to insure defendants the due process protection envisioned by the drafters of the U.S. Constitution.

Finally, the Supreme Court's opinion in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) is instructive on the point that "financial benefits" accruing to State Line Energy as a result of its sale (in Indiana) of electricity to an Illinois company (ComEd) do not support jurisdiction in Illinois because the benefits "do not stem from a constitutionally cognizable contact" with Illinois. *World-Wide Volkswagen*, 444 U.S. at 299. This is because, as a matter of constitutional law, a non-resident corporation should "reasonably anticipate being haled into court" in another state only when it "purposefully avails itself of the privilege of conducting business *within the forum*." *Id.* at 297.

In *World-Wide Volkswagen*, the Supreme Court held that because the non-resident corporate defendant closed no sales, performed no services and solicited no business in Oklahoma, there was no *in personam* jurisdiction. *Id.* at 295. The court noted, notwithstanding plaintiffs' "stream of commerce" and

"foreseeability" arguments: "a total absence of *affiliating circumstances* that are a necessary predicate to any exercise of state-court jurisdiction." *Id.*

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States *if its allegedly defective merchandise has there been the source of injury to its owner or to others.*

444 U.S. at 297 (emphasis added).

Here, State Line Energy's product (electricity), while placed into Illinois' stream of commerce by defendant ComEd, was certainly not the "source of injury" to any of the plaintiffs in this case. Rather, plaintiffs were injured as a result of alleged negligence by the owner of the Indiana premises. As important, State Line Energy has not "purposefully availed" itself of the privilege of conducting business "within the forum State" of Illinois. 444 U.S. at 297; *see, also, Hanson v. Denckla, supra*, 357 U.S. at 253. To the contrary, all of the evidence before the circuit court indicates State Line Energy has "purposely availed" itself of the privilege of conducting its business activities wholly within the State of Indiana. Besides the fact the State Line Energy defendants generate, sell and deliver *all* of the electricity in Indiana, all worker's compensation claims, unemployment compensation claims, union affiliations of the workforce and payroll taxes are administered by or through the relevant Indiana Agency. (C. 649, 730). Likewise, although plaintiffs repeatedly state that Chicago Fire Department personnel responded to State Line Energy's Indiana plant on the day of the incident at issue, they do not mention that the Hammond, Indiana Fire Department also responded (through the Indiana gate to the plant that plaintiffs

also never mention) (Dep. of S. Owen, pp. 31, 34, 44; C. 733, 734, 736) and assumed control and jurisdiction over fire-fighting and rescue operations as well as post-accident investigations. (Dep. of S. Owen, pp. 51-52; C. 738). Moreover, the City of Hammond Fire Department and the State of Indiana OSHA organization issued final reports on the cause and origin of the fire and explosion. (C. 738). No Illinois agency investigated or reported on this incident.

Clearly, State Line Energy has "purposely availed" itself to one State only—Indiana. It has none of the "affiliating circumstances" in Illinois, recognized as constitutionally sufficient contacts, such as sales offices, performing of services or solicitation of business. 444 U.S. at 295. Accordingly, under the federal due process cases cited herein, it was a violation of defendants' due process rights for the circuit court to exercise personal jurisdiction in this case. Therefore, this court must reverse the circuit court's decision and remand this case with instructions to dismiss State Line Energy and other non-resident corporate defendants.